

# Memorandum



**Date:** November 1, 2005

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(B)

**From:** George M. Burgess  
County Manager

**Subject:** Request to Advertise- Request for Proposals for Retail Concessions Program  
RFP No. MDAD-05-05

## RECOMMENDATION

It is recommended that the Board approve the attached Request to Advertise a Request for Proposals ("RFP") for a Non-Exclusive Retail Concessions Program, RFP No. MDAD-05-05, to obtain Prime Concessionaires, Developers, and/or Direct Lessees for certain retail outlets at the Miami International Airport. A copy of the RFP is attached in substantially completed form.

## BACKGROUND

Previously, the North/South Retail Program RFP No. MDAD-01-04 was advertised, issued and responses were received from three potential candidates for three of the four packages. It was recommended that the Proposal for Packages One and Two be rejected. No proposals were received for Package Three. Package Four was recommended for award to Miami International Airport Pharmacy. The Board then directed staff to proceed with the preparation of a new RFP, which would allow for a diversity of alternative retail management structures to include opportunities for local and/or small businesses.

The Board also requested that staff gather information from other airports to determine best practices and for staff to review other Requests for Proposals that were successful. Staff requested proposals that were issued and awarded within the past three years on retail, reviewed these proposals and incorporated salient points as was appropriate. Staff was requested to listen to the industry, particularly local interested parties. A Small Business Workshop was held in the morning of July 28, 2005, with 85 interested parties attending. Additionally, an Industry Review Meeting was advertised and held the afternoon of July 28, 2005, with 107 attendees who provided input directly at that meeting and afterwards through telephone calls and visits.

The RFP was revised to include appropriate feedback received from the industry and includes the following changes:

- Only locations which can be built out in the next two years have been included in this RFP. There are 2 locations in the North Terminal and 25 locations in the South Terminal.
- The amount of square footage and the number of locations have been reduced to recognize the revised passenger traffic forecast for the North and South Terminals.
- Some locations are deferred until the passenger traffic rises to a level suitable for buildout.


- Proposers may reduce the square footage of locations in the Concession Hall by 20 percent to accommodate storage in order to ensure that the appropriate square footage for retail and storage is maintained. The locations may be built out as needed to accommodate increases in passenger traffic at each location.
- There will be 27 locations contained in eight packages consisting of:
  - Packages One and Two with ten retail locations each,
  - Packages Three through Six with one direct lease location each,
  - Package Seven with one direct lease location which is a Small Business only location, and,
  - Package Eight with two direct lease locations which are Small Business only locations.
- Proposers can propose on packages as a Prime Concessionaire, Developer or Direct Lessee (for individual stores).
- The Technical Evaluation includes a component recognizing local themes and local ownership.
- The Price Evaluation limits the Minimum Annual Guarantee (MAG) to no more than 10 percent of the total evaluation points and the MAG is inclusive of the rent.
- No restrictions have been placed on the number of locations and/or packages a Proposer may propose on or be awarded, other than only Small Businesses may propose on the Small Business locations.

**PROJECT:** Retail Concessions Program

**PROJECT NO.:** RFP No. MDAD-05-05

**PROJECT DESCRIPTION:** Miami-Dade County, through the Miami-Dade Aviation Department, is seeking qualified firms to propose on the eight (8) packages described in the RFP for the purpose of financing, designing and constructing, leasing, managing, operating and maintaining, reasonably priced qualified retail locations within the North and South Terminals and Concourses, which includes two larger packages (Packages One and Two) of ten locations each and six direct leasing opportunities at Miami International Airport, four packages (Packages Three through Six) with one direct lease location each; one package (Package Seven) with one direct lease location which is a Small Business only location; and one package (Package Eight) with two direct lease locations which are Small Business locations, for a total of 27 locations.

**COST ESTIMATE:** This RFP is revenue generating. The Prime Concessionaires, Developers, and/or Direct Lessees will pay the Department a Minimum Annual Guarantee (MAG), which includes rent, or percentage of gross revenues, whichever is greater.



**TERM OF AGREEMENT:**

The Operational term of the Agreement shall be eight (8) years. At the sole discretion of the Department, the initial eight (8) year operational term may be extended for one (1) two (2) year term provided the extension is mutually agreed to by the Department and the Concessionaire in writing.

**MINIMUM QUALIFICATIONS  
EXCEED LEGAL  
REQUIREMENTS:**

None

**FUNDING SOURCE:**

Not applicable. See Cost Estimate above.

**REVIEW COMMITTEE DATE:**

N/A - Federal DBE project.

**CONTRACT MEASURES:**

30% DBE participation for Packages One (1) and Two (2). Packages Seven (7) and Eight (8) are Small Business only locations

**USING AGENCY:**

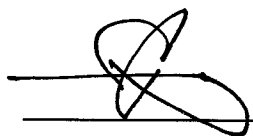
Miami-Dade Aviation Department

**PROJECT MANAGER:**

Patricia Ryan, Manager of Commercial Operations

**APPROVED FOR  
LEGAL SUFFICIENCY:**

Yes

  
\_\_\_\_\_  
Deputy County Manager




# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** November 1, 2005

**FROM:**   
Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No. 8(A)(1)(B)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8(A)(1)(B)

Veto \_\_\_\_\_

11-01-05

Override \_\_\_\_\_

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING THE ISSUANCE AND  
ADVERTISING OF A REQUEST FOR PROPOSALS  
(RFP MDAD 05-05) RELATING TO A NON-EXCLUSIVE  
CONCESSION PROGRAM TO SELECT QUALIFIED FIRMS  
TO DEVELOP RETAIL CONCESSION LOCATIONS IN THE  
NORTH AND SOUTH TERMINALS AND CONCOURSES AT  
MIAMI INTERNATIONAL AIRPORT**

**WHEREAS**, the Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby authorizes the County Manager, or his designee, to issue, and advertise in local publications for responses to the Request for Proposals (RFP MDAD 05-05) relating to a Non-Exclusive Concession Program to select qualified firms in substantially the form attached hereto, so as to obtain qualified firms to propose on one or more of eight packages described in the RFP for the purpose of financing, designing and constructing, leasing, managing, operating, and maintaining retail concession locations within the North and South Terminals and Concourses at Miami International Airport. The County Manager shall select from among those submitting responses that proposal for each package which best fulfills the requirements and standards set forth in the Request for Proposals, and the selection process shall be undertaken as provided in the Request for Proposals.

Upon such selection, the County Manager, or his designee, shall recommend award of an Agreement with the selected proposer for each package for submission to the County Commission for approval, or shall appoint a negotiation committee to negotiate an Agreement for each package as provided by the RFP, and then recommend an Agreement for each package in accordance with such negotiations for approval by the County Commission.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebecca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of November, 2005. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency. rw

Roy Wood

By: \_\_\_\_\_  
Deputy Clerk

**REQUEST FOR PROPOSALS  
FOR NON – EXCLUSIVE  
RETAIL CONCESSION PROGRAM  
AT MIAMI INTERNATIONAL AIRPORT  
RFP NO. MDAD-05-05**

PRE-PROPOSAL CONFERENCE TO BE HELD ON

November 29, 2005

At 10:00 A.M. (local time) in the Miami International Airport Hotel, Terminal E, 7<sup>th</sup> Floor,  
Conference Room  
Miami International Airport

**Issuing Department**

MIAMI-DADE AVIATION DEPARTMENT  
Contracting Officer: Lenora Allen-Johnson  
(305) 876-8065

SUBMISSIONS ARE DUE AT THE ADDRESS SHOWN BELOW  
NO LATER THAN

January 18, 2006

**AT 2:00 P.M. LOCAL TIME**

**AT:**

MIAMI-DADE COUNTY  
CLERK OF THE BOARD  
STEPHEN P. CLARK CENTER  
111 NW 1st STREET  
SUITE 17-202  
MIAMI, FLORIDA 33128-1983

**THE RESPONSIBILITY FOR SUBMITTING A RESPONSE TO THIS REQUEST FOR PROPOSAL ON OR BEFORE THE STATED TIME AND DATE WILL BE SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER AND THE COUNTY WILL IN NO WAY BE RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE.**

**MIAMI-DADE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER AND DOES NOT DISCRIMINATE BASED ON AGE, GENDER, RACE OR DISABILITY.**

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**SECTION 6      FORM OF LEASE AND CONCESSION AGREEMENTS****EXHIBITS TO THE FORM OF LEASE AND CONCESSION AGREEMENT:**

- Exhibit A    -    Concession Locations
- Exhibit B    -    Payment and Performance Bond (construction)
- Exhibit C    -    Not Used
- Exhibit D    -    MAG Performance Bond
- Exhibit E    -    Retail Concessions Design Guidelines
- Exhibit F    -    Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N)  
                    Tenant Airport Construction Reimbursable Procedures (TAC-R)
- Exhibit G    -    Independent Audit Report
- Exhibit H    -    \*See Below
- Exhibit I    -    Monthly Report of Gross Revenues
- Exhibit J    -    Prohibited Items List
- Exhibit K    -    Commercial Operations Tenant Handbook
- Exhibit L    -    Standards of Operation
- Exhibit M    -    Vitrines Locations in South Terminal

\*Executed Affidavits and Condition of Award Certificates will be added as Exhibit H.

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## DEFINITIONS

The following words and expressions shall be construed as follows, except when it is clear from the context that another meaning is intended.

The term "**Addenda**" shall mean the written or graphic instruments issued prior to Proposal opening that clarify, correct or change the RFP No. MDAD-05-05 documents.

The terms "**Agreement**" shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term "**Airport**" shall mean Miami International Airport ("MIA").

The term "**Board**" shall mean Board of County Commissioners of Miami-Dade County.

The term "**Capital Improvement Program**" or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The "**Clerk of the Board**" shall mean the office serving as ex-officio Clerk of the Board of County Commissioners office and responsible for maintaining the ordinance and resolution indices; receiving bids and requests for proposals; executing contracts, agreements and change orders; and advertising public hearings; among other roles.

The term "**Code**" shall mean the Code of Miami-Dade County, Florida.

The term "**Concessionaire**" shall mean the person, firm, or entity that enters into the Agreement with the County.

The term "**County**" shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term "**Days**" shall mean calendar days, unless specifically stated as other.

The term "**Direct Lessee**" shall mean the Concessionaire that will not Sub-Lease Locations, but will operate all Locations.

The term "**Department**" or "**MDAD**" shall mean the Miami-Dade Aviation Department.

The term "**Developer**" shall mean the Concessionaire that will not operate Locations but will sublease all Locations.

The term "**Director**" shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term "**Airport Concession Disadvantaged Business Enterprises**" or "**ACDBE**" shall have the meaning ascribed in Section 5 entitled "Disadvantaged Business Enterprises".

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the concession locations as depicted on Exhibit A, "Concession Locations".

The term **"Location Storage"** shall mean up to 20% of the retail space permitted for storage within the Locations.

The term **"Location Commencement Date"** shall mean for each Location, the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date.

The term **"North Terminal"** shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Prime Concessionaire"** shall mean the Concessionaire who operates one or more Location(s) and sub-leases one or more Location(s).

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-05-05.

The term **"Proposer"** shall mean the person, firm, entity or organization submitting a Proposal to the RFP MDAD-05-05.

The term **"Request for Proposal" or "RFP"** shall mean this RFP No. MDAD-05-05, and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Small Business"** shall mean a business with annual gross sales of five (5) million dollars or less, regardless of the number of employees.

The term **"South Terminal"** shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term **"State"** shall mean the State of Florida.

The term **"Sub-tenant"** shall mean any person, firm, entity or organization, entering into an agreement with Concessionaire for sale of retail products to the public at the Airport at a Location.

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term **"Turnover Date"** shall mean the date approved by the Department for the Concessionaire to commence construction of a Location.

Additional Terms are included in Section 6 of this RFP in the Form of Agreement. It is incumbent on Proposers to carefully consult all terms as set forth in the Form of Agreement.

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## SECTION 1

### INTRODUCTION AND GENERAL INFORMATION

#### I. PURPOSE: REQUEST FOR PROPOSAL

Miami-Dade County, represented by the Miami-Dade County Aviation Department, is seeking qualified firms to propose on the packages described in this Request for Proposal (RFP), for the purpose of financing, designing and constructing, leasing, managing, and maintaining quality, retail Locations within the North and South Terminals and Concourses at Miami International Airport. The purpose of this non-exclusive RFP is to select concessionaires who can best fulfill the Department's objectives as delineated in this RFP. The retail concession opportunities with 27 Locations have been subdivided into eight (8) packages.

This RFP establishes potential opportunities for Developers, Prime Concessionaires and Direct Lessees. Proposers may propose on any Package and any number of Packages, with the exception of Packages Seven (7) and Eight (8) which are designated for Small Businesses only. Awards will be made to the highest ranked responsive and responsible Proposer for each Package, in accordance with the process established in this RFP. One Proposer may be awarded more than one Package, however, Packages Seven (7) and Eight (8) can only be awarded to a Small Business.

Package One has ten (10) Locations contained in the North and South Terminal and Concourses; Package Two (2) has ten (10) Locations contained in the North and South Terminal and Concourses; Packages Three (3), Four (4), Five (5), Six (6), and Seven (7) have one (1) Location each in the South Terminal and Concourses. Package Eight (8) has two (2) Locations - One (1) in the North Terminal and one in the South Terminal. Packages Seven (7) and Eight (8) are designated Small Business packages and only Small Businesses may propose on them. The Locations and amount of available square feet are subject to change due to Airport construction. Exhibits depicting the Locations should not be considered lease outline drawings. They are merely representative of the intended Locations.

MDAD has initiated a "Staging" process, which allows for a phasing in of outlets over a period of time based on enplanements.

- First Stage – Opening of the South Terminal - will include Newstands in Central and "J" Terminals
- Second Stage – At point when South Terminal reaches 1.5 million enplanements – Retail in Central area near the Food Court
- Third Stage - At point when South Terminal reaches 2.5 million enplanements – The Outer Concessions
- Fourth Stage - At point when South Terminal reaches 3.5 million enplanements – The rest of the concessions.

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## II. MIAMI INTERNATIONAL AIRPORT GENERAL DESCRIPTION

Aviation has been a hometown industry in Miami, having started more than 75 years ago. The first flight from Pan Am Field in 1928 was an international departure. Today, Miami International Airport enjoys top rankings as the leading international freight airport in the USA and the nation's third leading gateway for international passenger traffic.

MIA strengths in international passengers, and cargo activity stimulate a host of other companies, such as tourism, the cruise industry and international banking and commerce. More than 77% of all exports and 82% of all imports between the United States and the Latin American/Caribbean region flow through MIA.

In the international passenger traffic arena, MIA handles 58% of all U.S./South American passenger traffic, 41% of all U.S./Central American traffic and 34% of the U.S./Caribbean passenger traffic market.

Nearly 89,000 people per day pass through the Airport. Among them are travelers from around the world arriving in the Airport for business or leisure purposes. As for those simply connecting through the Airport, by virtue of geographic location, the Airport has proven to be the number one international-to-international connecting airport in the nation through the extensive air service network connecting the Americas, the Caribbean and Europe.

Miami-Dade County operates the world's leading cruise port, and more than 80% of all cruise passengers begin or end their cruise with flights to/from the Airport. In addition, Miami is the leading international financial center in the southeastern United States. The Airport stimulates much of that activity as well, through the financing of international trade facilitated through our Airport. Last year, the Airport handled more than \$25.6 billion in merchandise that was cleared through the Airport, and that does not account for about 43% of our total cargo that is in transit to other nations.

Following are "Facts at a Glance" information regarding the Miami-Dade Aviation Department, as of July 2005:

### **Miami-Dade Airports:**

- Miami International Airport -MIA
- Opa-locka Airport - OPF
- Kendall-Tamiami Executive Airport - TMB
- Homestead General Aviation Airport - X51
- Opa-locka West Airport - X46
- Dade-Collier Training and Transition Airport – TNT

### **Economic Impact:**

The Airport's annual impact on local tourism, cruise, international banking, trade & commerce is \$19.1 billion. The Airport and related aviation industries contribute 242,387 direct/indirect jobs in South Florida.

**MIA Rankings for 2004:**

## U.S. Airport Rankings

1st in the U.S.	- International Freight
3rd in the U.S.	- International Passengers
4th in the U.S.	- Total Freight
3rd in the U.S.	- Total Cargo (Freight + Mail)
15th in the U.S.	- Total Passengers
19th in the U.S.	- Total Number of Operations

## World Airport Rankings

8th in the world	- Total Freight
8th in the world	- International Freight
9th in the world	- Total Cargo (Freight + Mail)
25th in the world	- Total Number of Operations
27th in the world	- Total Passengers
28th in the world	- International Passengers

## Miami International Airport (Year 2004 Figures)

Land area:	3,230 acres
Runways:	
9R/27L	13,000'
9L/27R	10,500'
8/26	8,600'
12/30	9,355'

**Personnel:**

Aviation Dept:	1,800
Other:	29,886
Total:	31,786

**Hotel:**

Miami International Airport Hotel has 259 rooms.

<b>Operations (2004):</b>	401,253 (take-offs/landings)
	1,097 (average per day)
Number of gates:	107 Common
Scheduled air carriers:	approx. 72
Non-scheduled air carriers:	approx. 17
Destinations:	144 cities/four continents

**Freight:**

2004 Totals:                    1.6 million U.S. tons international  
                                      312,269 U.S. tons domestic  
                                      1.9 million U.S. tons total

**Passenger Information:**

2004 Total:                    30.2 million passengers  
Weekday Daily Average: 88,775 passengers  
Weekend Daily Average: 95,735 passengers  
Weekly Average:            619,661 passengers

APPENDIX G – “Passenger Traffic by Concourse” is provided for information purposes only.  
APPENDIX H – “J.F. Brown Forecast” is provided for information purposes only.

**Passenger Demographics:** The Airport has conducted a survey of people traveling through the Airport and the report pertaining to demographics has been excerpted and the “Excerpts from Passenger Survey” are attached for your convenience as APPENDIX K “Passenger Profile”. The Department recognizes the need to improve its concession program and the results of the survey indicate passengers recognize this need also.

**Parking:** Two long-term parking garages – Dolphin and Flamingo – and two short-term lots provide approximately 7,800 spaces, including those reserved for persons with disabilities. There is also a high-vehicle lot adjacent to the Dolphin Garage.

**Airport Improvements:** The Airport's \$5.2 billion Capital Improvement Program is well under way, encompassing all aspects of Airport operations, from the terminal and roadways to the cargo locations and the airfield.

**Terminal:** MIA is being expanded from 3.5 million square feet in 1995 to 4.7 million square feet. Further development of the North and South Terminals will add 2.7 million square feet for a total of 7.4 million square feet upon completion of phase one of the CIP, with 100 international gates and 30 domestic gates for a total of 130 gates. The Terminal will have 556 ticket counters and 120 self-service devices. Total square feet for the duty and tax-free concession is 41,082 square feet.

**Airfield:** The fourth runway on the north side of the Airport was opened in August 2003. The 8,600-foot runway increased airfield capacity by 25% and will be used primarily for aircraft landings.

**Landside:** The Capital Improvement Program includes ground transportation components to be constructed within the next five to six years. A central collection toll plaza opened in October 2003 and provides a state-of-the-art parking revenue system. Projects remaining include upgrading short-term parking, new bus stations for the cruise ship operations at the North and South terminals, and the MIA Mover.

### III. CONCESSION GOALS AND OBJECTIVES

The Department has established concession goals and objectives to better meet or exceed the demands of today and tomorrow's traveling public.

The Department's concession goals and objectives for the Airport are to:

- Enhance the image of the Airport as a world-class airport.
- Enhance customer service and satisfaction by improving product choice, price choice, and customer service.
- Optimize sales and revenues.
- Optimize design and location of retail units.
- Present a local and regional identity to the traveling public.
- Provide national and international branded concepts.
- Increase local and Airport Concession Disadvantaged Business Enterprises (ACDBE) participation to the extent possible.

These goals will provide balance between maximizing revenues and providing a high level of customer service consistently delivered to the Airport community, which consists of the traveling public and patrons, the Airport employees, service providers, and residents of South Florida.

### IV. MINIMUM QUALIFICATIONS

#### 1. Proposer's Qualifications:

- a. Packages One (1) and Two (2) – Proposers must demonstrate three (3) years continuous experience within the last five (5) years in each of the following capabilities: financing, designing and construction, leasing, managing, and maintaining multi-tenant retail locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of \$2 million in annual gross sales for such retail locations. Proposers who wish to operate and not sub-lease Locations within the package on which they are proposing must demonstrate three (3) years of continuous experience within the last five (5) years in operating locations, similar to those locations for Packages One (1) and Two (2).
- b. Packages Three (3), Four (4), Five (5), Six (6), Seven (7), and Eight (8) - Proposers must demonstrate three (3) years continuous experience within the last five (5) years in each of the following capabilities: financing, designing and construction, managing, operating and maintaining retail locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of \$500,000 in annual gross sales for such retail locations.
- c. Must be authorized to do business in the State of Florida.

2. Sub-Tenant's, including ACDBE Sub-tenants, Minimum Qualifications:
  - a. Three (3) years continuous experience within the past five (5) years in the managing or operating and maintaining one or more retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of \$250,000 in gross sales per year per location.
  - b. Must be authorized to do business in the State of Florida.

## SECTION 2

### PROPOSAL FORMAT

This Section outlines the submission requirements and provides a guide to the Proposer for proposal submission to this RFP.

#### I. CONTENTS OF PROPOSAL

The proposal must consist of two (2) separate parts: (A) Technical Proposal and the (B) Price (MAG) Proposal as follows: Proposers shall address all sections herein, except that Item "I" below applies to Proposers that are Prime Concessionaires and Developers only.

#### II. TECHNICAL PROPOSAL

Proposers must carefully follow the format and instructions outlined below. The Technical Proposal should contain, but is not limited to, each of the following enumerated categories, fully completed, signed, and notarized as required. A set of tabs to identify each part of the Proposal should be inserted to facilitate quick reference. The Proposal must include all of the following items and documents, organized and tabulated in the order as follows.

Proposals should be organized and tabulated in the following:

- A) Table of Contents
- B) Executive Summary
- C) Minimum Qualifications Form (Appendix A)
- D) Financial Capacity to Perform
- E) Experience and Qualifications
- F) Developing, Designing and Construction
- G) Managing, Operating and Maintaining
- H) ACDBE Plan/Participation
- I) Leasing/Subleasing Plan
- J) Forms/Affidavits/Acknowledgements (Refer to Item "J", below.)

And,

- K) Minimum Annual Guarantee Proposal Form("MAG") Appendix B, – Separate and Sealed.

***One Proposer may propose on more than one (1) Package. If a Proposer proposes on more than one (1) Package, the Proposer shall follow these instructions:***

*The Proposer shall provide a list of all Packages that the Proposer is proposing on, identifying each Package by number and the Proposer as a Developer or a Prime Concessionaire or a Direct Lessee for each Package,*

*The first Package for which Proposer shall propose shall include a response to all items as stated above.*

*For each additional package beyond the first package, the Proposer shall supply responses, clearly marked for applicable Package Number to the following items only: F1, F2, G1, G2, G3, and H.*

*Additionally, the Proposer shall submit a separate, sealed and clearly marked Appendix B (Item K - the MAG Proposal) for each and every Package for which the Proposer wishes to compete.*

No individual Location proposals may be submitted for Packages One (1), Two (2), or Eight (8). Proposals submitted for individual concepts and/or individual Locations and not for each complete package of Locations as defined herein shall be deemed non-responsive and will not be considered.

#### **A. TABLE OF CONTENTS**

The Table of Contents should outline the major areas of the proposal in sequential order. All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents. A Proposer's checklist should list all requested information and the associated page number in the Minimum Qualifications Form and Technical Proposal. If additional information is provided as part of or in support of the Proposal, this information should be referenced here also.

#### **B. EXECUTIVE SUMMARY**

Provide a brief summary describing the Proposer's ability to perform the Work requested in this RFP; a history of the Proposer's background and experience in providing similar services; the qualifications of the Proposer's personnel to be assigned to this project and a brief history of their background and experience; and, any other information called for by this RFP which the Proposer deems relevant. This summary should be brief and concise to advise the reader of the basic services offered, and the experience and qualifications of the Proposer and staff. The executive summary should be no longer than three (3) pages.

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**C. MINIMUM QUALIFICATIONS FORM**

The "Minimum Qualifications Form", Appendix A – Part 1 should be fully completed, signed, and notarized as required. A Minimum Qualification Form submitted which does not include necessary information may be deemed non-responsive and may not be considered for award of any Agreement, while failure to submit Appendix A "Minimum Qualifications Form" shall render the Proposal non-responsive.

NO PRICING INFORMATION CAN BE INCLUDED IN THE MINIMUM QUALIFICATIONS FORM (APPENDIX A) AND TECHNICAL PROPOSAL. PRICES (MAG) SHALL BE PROVIDED ON APPENDIX B "MINIMUM ANNUAL GUARANTY PROPOSAL FORM", WHICH WILL ONLY BE CONSIDERED AFTER EVALUATION OF THE TECHNICAL PROPOSALS AS FURTHER DESCRIBED IN SECTION 4.

**D. FINANCIAL CAPACITY TO PERFORM**

The Proposer shall provide copies of certified financial statements (last two fiscal years - which include a balance sheet and income statements) prepared in accordance with generally accepted accounting principals (GAAP) for the Proposer and any individual companies comprising a team or joint venture that are signatories to the guaranteed payment of the MAG and Fee. If certified financial statements are not available, the Proposer may submit its complete federal tax return and a copy of its most recent financial statements for the last two years. Proposer shall describe the financial relationship and responsibilities with regard to joint ventures, any subsidiaries or related companies.

All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves. Equity shares should be specified on the form and on additional sheets, if necessary. Proposers should specify the source of funds (cash, bank loan, etc.) for the start-up costs.

- 1) Capital Investment: Proposer shall submit a financial plan, which will indicate the source of funding to be used for capital improvements, and the amount of working capital the Proposer determines will be required to maintain operations. Additional information will include, but not be limited to estimated costs for improvements with projected expenses for leasehold improvements and/or furniture, fixtures and equipment.
- 2) References: The Proposer must list three letters of business reference and contact information for the authors of those letters (to allow the Department to verify this information).
- 3) Financial Background Information: The Proposer shall include an interim balance sheet and income statement reflecting the Proposer's current financial conditions and any significant financial events occurring subsequent to the closing date of the most recent certified financial statements or Federal Tax Returns as required in first paragraph of this sub section "D".

- 4) Requested Information from Subsidiaries: If Proposer operates as a subsidiary of another company, include the appropriate financial information as requested above for both the parent and subsidiary. If parent company guarantees the MAG and contract agreement for the Proposer, provide a letter from an authorized representative of the parent company attesting to the parent company's intent to guarantee the MAG and lease agreement.

## **E. EXPERIENCE AND QUALIFICATIONS**

Proposer shall explain in detail the number of years and extent of Proposer's industry experience, with special emphasis upon prior experience with the development and management or operation of such locations at airports, transportation centers, retail shopping centers, or marketplaces. Proposer must also provide details on the pertinent experience of persons who will be directly involved in the development and management and operations of the in the development and management or operations of the locations.

Proposer shall provide:

- 1) Names and addresses of shopping centers or airport programs developed and managed or operated by the Proposer in the prior five years.
- 2) Unit listing of all locations for Proposer's experience in airport, transportation centers, retail shopping centers, or marketplaces. Provide the facility name, location, square footage, type of operation, annual gross revenue, annual airport or property owner rent, percentage rent, required customer service efforts, and any other details of the rent structure as well should be included. Also provide a listing of percentage rents specific to concession or shop concepts, and copies of contracts substantiating this experience.
- 3) Highlights of the merchandising concepts for each Location set forth in Exhibit A "Concession Locations".
- 4) A detailed corporate history of development, management or operations experience.
- 5) Examples of marketing programs undertaken to promote sales and customer service in the locations, including samples of advertisements, promotional materials, flyers, coupons, etc.
- 6) Information on quality monitoring programs that Proposer has implemented at other venues. This shall include both descriptive information and sample evaluation forms from quality audits, performance standard evaluations, or other similar programs.
- 7) Other information that supports Proposer's development/management/operations experience as it pertains to the Proposal.

## **F. DEVELOPING, DESIGNING AND CONSTRUCTION**

- 1) Proposers shall submit (FOR EACH PACKAGE, specifically listing the Package Number) a narrative description and drawings or photographs of the proposed Capital Improvements, and the dominant design theme in sufficient detail to facilitate evaluation of the quality and design of the proposed improvements. Consideration will be given for local theme concepts.

- 2) Each Proposer is required to submit (FOR EACH PACKAGE, specifically listing the Package Number), as part of its Proposal, a Design and Construction Schedule detailing its plan for improvements, fixtures and/or signage installation throughout the Airport using a timeline for each concept and indicating anticipated buildout time.
- 3) The Proposer must also provide its procedures for coordinating design and construction, including but not limited to, field inspection and tenant assistance, as well as, its understanding of the Miami-Dade Building Department permitting process.
- 4) Proposer should discuss its experience in airport concession program expansion planning or similar experience elsewhere, demonstrating experience in airport operations, security and locations. Identify its in-house architectural capabilities or any architectural design teams to be used, specifying prior experience in the design and design review of airport, and shopping locations (including resumes and project experience) with photographs attached.
- 5) For Common area: Proposers are advised that the Concessionaire for Package One shall be responsible for half (three) of the six (6) vitrines at the entrance to the South Terminal and Concourse H, while the Concessionaire for Package Two shall be responsible for the other half (three) of the six (6) vitrines at the entrance to the South Terminal, all in accordance with the South Terminal Retail Concession Guidelines; as such the Proposers to Packages One (1) and (2) shall present a description of the plan to fulfill this requirement.

#### **G. MANAGING, OPERATING AND MAINTAINING**

- 1) Provide Proposer's Management Plan (FOR EACH PACKAGE, specifically listing the Package Number) including managing, operating and/or maintaining the Package for which it is proposing, considering the requirements in the Scope of Services (Sub-Article 2.05, in Section 6 of this RFP.). Describe the management concepts and operation strategies. Indicate years of experience in property management, including the centers managed both presently and in recent years. Provide sales, sales per enplanement, if applicable, square footage managed, and number of units managed. Identify the elements from past experience that may be applicable to working at this Airport.
- 2) Staffing Plan (FOR EACH PACKAGE, specifically listing the Package Number): Provide the following details relating to the Proposer's staffing to meet its management, and operations obligations:
  - (a) Organizational chart specific to MIA operations, also noting decision-making responsibilities. Resumes of key staff members should be provided.
  - (b) Describe the proposed staffing requirements with a summary of the duties for management/supervisory positions in detail.
  - (c) Staffing level and schedule to illustrate coverage of operating hours.
  - (d) Specifically point out any activities that will be performed off-site (i.e., at a corporate headquarters or regional office) or by a third-party provider.

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- 3) Sales and Revenue/Financial Projections (FOR EACH PACKAGE, specifically listing the Package Number): Proposers should provide a realistic estimate of the expected annual Gross Revenues to be derived from the proposed operations. Major assumptions used in developing the sales projections should also be clearly stated. For each Package, identify the open concept categories.
  - 4) Describe Proposer's labor and training practices: Provide the following information regarding the labor and training practices which will be used at MIA regarding Proposer's own organization, as well as similar information for any proposed Sub-tenants with whom Proposer already has agreements in principle or commitment letters:
    - a) Provide employee handbook, if any.
    - b) Briefly describe recruiting techniques and sources of management and non-management labor.
    - c) Briefly describe any motivation programs or incentives Proposer has in place for its employees and discuss if they will be extended to the Sub-tenant's employees if applicable.
  - 5) Customer Service Philosophy and Programs - the Proposer shall provide:
    - a) Customer service-training program or any training or education programs that the Proposer will offer,
    - b) A description of the goals and objectives with regard to customer service,
    - c) The proposed customer service survey program's, frequency of use, data analysis methodology, and sample summary reports, and finally a proposed Customer Service Plan.
    - d) Speed of service standards.
    - e) Customer service policies and quality assurance procedures.
    - f) Customer guarantees, exchange or refund policies.
    - g) Customer complaint/comment policies (how they will be received, how they will be addressed, etc.)
    - h) List credit cards that will be accepted.
    - i) List retail shipping and gift-wrap services that will be made available.
    - j) List any other services that will be provided.
  - 6) Property Management Plan: Describe Proposer's opinion as to the day to day property management approach and how Proposer intends to implement it in this program, as well as the following:
    - a) Sales reporting program
    - b) Sub-tenant coordination, if applicable
    - c) Sub-tenant assistance, if applicable
    - d) Sub-tenant administration and compliance/ enforcement plan, if applicable
    - e) Procedures to evaluate unit productivity and to upgrade or replace under-performing locations.

- 7) Submit the proposed facility maintenance plan indicating the method and frequency by which Proposer intends to maintain all Locations and the administrative support space in a first class manner.
  - a) Describe Proposer's policy for maintenance and repairs and replacement of equipment, displays, fixtures and carpeting in both the Proposer's Locations and Sub-tenant Locations.
  - b) Provide a plan to handle concession servicing including delivery, storage, trash removal, and recycling.
- 8) Provide other relevant information, including local management information that supports Proposer's proposal on providing services as required herein.

Note: After Proposal submission, but prior to the award of any contract issued as a result of this RFP, the Proposer has a continuing obligation to advise the Department of any changes, intended or otherwise, to the Key Personnel identified in its Proposal.

#### **H. ACDBE PLAN/PARTICIPATION**

(FOR EACH PACKAGE, specifically listing the Package Number, and as further detailed below):

- 1) ACDBE Plan – Packages One (1) and Two (2) - Appendix C “Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision” and as stated below:

The Proposer shall demonstrate a commitment in the participation of the County's ACDBE program, including a commitment to maximize the participation of certified ACDBE's in providing retail concession services.

Proposer shall submit evidence that there shall be at least:

**30%** Airport Concession Disadvantaged Business Enterprise (DBE) participation, as defined in Appendix C – “Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision”. The Proposer must include information that will clearly detail the minimum amount of operational time that the certified ACDBE will spend on site in the operation and participation of retail concession services.

Submit for evaluation the proposed ACDBE outreach program emphasizing concession opportunities.

If proposing as a joint venture, the proposal must specify the following:

Each certified ACDBE JV partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

Each certified ACDBE partner must share in the ownership, control, management, administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

Each certified ACDBE JV partner must perform work that is commensurate with the scope of services of the Lease and Concession Agreement.

The Proposer must follow the instructions for the ACDBE participation provisions described in Section 5 "Airport Concession Disadvantaged Business Enterprises" and the instructions detailed in Appendix C "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and complete, sign and submit with the Proposal any required form(s), as may be applicable, as part of the Technical Proposal.

- 2) ACDBE Participation – Packages Three (3) through Eight (8) - There are no ACDBE goals established for these Packages. The Proposer shall provide information and appropriate substantiating documentation and commitment statements concerning any ACDBE Participation it wishes to incorporate into its Proposal.

**I. LEASING/SUBLEASING PLAN – For Prime Concessionaires and Developers only:**

Concept Plan: Provide a description of the proposed concept plan, demonstrating an understanding of local, national and international retailing concepts and how and why those concepts will be integrated into the plan. For each Location, using Exhibit A "Concession Locations", identify the proposed concept. For each proposed concept, Proposer must include, at minimum, a letter of interest.

**J. FORMS/AFFIDAVITS/ACKNOWLEDGEMENTS**

The Proposer must complete, sign as required, and submit the following documents as part of its Technical Proposal:

Appendix A - Minimum Qualifications Form

Appendix C - Disadvantaged Business Enterprise Participation Plan/Provision (Not applicable for Packages Three (3) through Eight (8))

Appendix D - Acknowledgment of Addenda

Appendix E - Proposal Bond Guaranty for each package

Appendix F - Registration for Oral Presentation

Appendix I - Local Preference

Appendix J - Single Execution Affidavits and Condition of Award Certificates

**K. MINIMUM ANNUAL GUARANTY PROPOSAL FORM (SEPARATE FOR EACH PACKAGE)**

The price MAG Proposal Form, Appendix B, submitted by the Proposer will establish the financial elements of this RFP and is considered by the County as constituting an offer by the Proposer, as stated above. The Proposer must submit the price MAG Proposal Form FOR EACH PACKAGE ON WHICH IT IS PROPOSING, in a separate sealed envelope (separate from the Technical Proposal) clearly marked on the sealed envelope or package "PRICE (MAG) PROPOSAL", together with the Proposer's name, RFP Number, RFP

title, and PACKAGE NUMBER. The Proposer may submit the separate sealed Price (MAG) Proposal(s) inside the same container or package together with the separate Technical Proposal. The Price MAG Proposal shall be submitted as mentioned above on Appendix B "Minimum Annual Guaranty Proposal Form", and in the manner stated on Appendix B "Minimum Annual Guaranty Proposal Form". Proposers who do not submit pricing in accordance with Appendix B "Minimum Annual Guaranty Proposal Form" may be found non-responsive.

The price MAG Proposal Form must contain all information required on the price MAG Proposal Form including as follows:

- 1) Package Number.
- 2) Minimum Annual Guarantee Amount Proposed (which is inclusive of the Location and Location Storage rent).
- 3) Breakdown of the MAG – as requested on Page 2 of Appendix B "Minimum Annual Guaranty Proposal Form".

Note: The price MAG Proposal Form shall consist of one original and ten copies. Any telegraphic or facsimile of the price MAG Proposal Form will not be considered.

The price MAG Proposal Form must either be typed or completely legible in blue ink. The Proposer's authorized representative shall sign the form in blue ink. In addition, any corrections made to the price MAG Proposal Form shall be initialed and dated by the Proposer's authorized representative in blue ink. The use of pencil or erasable ink will result in the rejection of the Proposal. Failure to sign the price MAG Proposal Form may render the Proposal non-responsive.

Proposers cannot qualify, place conditions or additional terms with the Price (MAG) Proposal; Proposers who place qualifications, conditions or additional terms with the Price (MAG) Proposal may be found non responsive.

### **III. PROPOSAL GUARANTY**

Proposers submitting a proposal for Packages One (1) and Two (2) are required to provide a Proposal Guaranty of \$25,000.00 (Per Package, if proposing on more than one Package) with its Proposal. Proposers submitting a proposal for Packages Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8) are required to provide a Proposal Guaranty of \$2,500.00 (per Package, if proposing on more than one Package) with its Proposal. The Proposal Guaranty must be in the form of a cashier's check or certified check from any national or state bank, made payable to Miami-Dade County, Florida or a Proposal Bond Guaranty prepared on the attached form, "Proposal Bond Guaranty", Appendix E, duly executed by each Proposer as principal and having a Surety thereon meeting the requirements set forth in this RFP document. The County will hold proceeds of the proposal guarantee check without interest to the Proposer. Failure to include the specified Proposal Guaranty shall render the Proposal non-responsive.

Proceeds of checks submitted, as guaranty, will be returned to all unsuccessful Proposers after execution of any Agreement issued as a result of this RFP. Proposal Bond Guarantees will not be returned to any Proposer(s) but will be discharged as provided therein. The proceeds of the Selected Proposer's guaranty will be returned after the County and the Concessionaire have executed an Agreement. In the event the Agreement is not awarded within the general time frame stipulated in the advertisement for the RFP, the County will return the proceeds of all checks, without interest, submitted as proposal guaranty.

In the event the Selected Proposer fails to provide said payments, security, evidence of insurance, or executed signature pages within thirty (30) calendar days after notice of award or fails to begin operation as required by the Agreement, the Proposal Guaranty will be forfeited to the County as Penalties and award rescinded.

#### IV. PROPOSAL PREPARATION REQUIREMENTS

Proposers must follow instructions of Section 3 "Proposal Submission". The proposal must consist of two separate parts: a) Technical Proposal (original and all copies), and b) sealed Price (MAG) Proposal (original and all copies). The Technical Proposal must be packaged separately from the sealed Price (MAG) Proposal, and both must be submitted as follows:

Proposer's Name  
Proposer's Address  
Proposer's Telephone Number

Clerk of the Board  
Stephen P. Clark Center  
111 NW 1st Street,  
17th Floor,  
Miami, FL 33128-1983

RFP No.:  
RFP Title:  
Proposal Due Date:

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## SECTION 3

### PROPOSAL INFORMATION AND REQUIREMENTS

#### I. CONTRACTING OFFICER

The Contracting Officer for this RFP is:

Lenora Allen-Johnson  
Miami-Dade Aviation Department,

**Location address:**

4200 N.W. 36 Street, Building 5A, 4<sup>th</sup> Floor  
Miami, FL 33122

**Mailing address:**

P.O. Box 592075  
Miami, FL 33159

Phone: (305) 876-8065

Fax: (305) 876-8068

#### II. RFP AVAILABILITY

Copies of this RFP may be obtained from the Office of Contracts Administration, Miami-Dade Aviation Department, Building 5A, 4200 N.W. 36<sup>th</sup> Street, 4<sup>th</sup> Floor, Miami, Florida 33122, with a nonrefundable payment of **Fifty Dollars (\$50.00)** per set, company check only, made payable to the Miami-Dade Aviation Department (MDAD).

**PROPOSERS WHO OBTAIN COPIES OF THIS SOLICITATION FROM SOURCES OTHER THAN THE DEPARTMENT'S CONTRACTS ADMINISTRATION DIVISION RISK THE POTENTIAL OF NOT RECEIVING ADDENDA, OR ADDITIONAL MATERIALS SINCE THEIR NAMES WILL NOT BE INCLUDED ON THE LIST OF FIRMS PARTICIPATING IN THE PROCESS FOR THIS PARTICULAR SOLICITATION. FAILURE OF SUCH PROPOSERS TO OBTAIN CRITICAL INFORMATION COULD IMPACT THE RESPONSIVENESS OF THEIR PROPOSAL, AND SUCH PROPOSERS ARE SOLELY RESPONSIBLE FOR THAT RISK.**

#### III. PRE-PROPOSAL CONFERENCE

A pre-proposal conference has been scheduled for the date and time as it appears in the advertisement for this RFP. The purpose of this Conference is to afford Proposers an opportunity to seek clarification prior to the RFP submittal. Proposers are encouraged to submit any questions they may have, in writing, to the contracting officer delineated herein. Any changes to this RFP Solicitation must be by written Addendum. Attendance is recommended but not mandatory. A walk-through of all locations may take place after the pre-proposal conference, if requested in advance.

Any addenda or revisions to the RFP resulting from the Pre-proposal Conference will be developed as expeditiously as possible and be distributed to all parties on record as having purchased and received the RFP. Attendees who attended the Pre-proposal Conference and

who have not purchased the RFP will not be notified that an addendum has been issued. Pre-proposal Conference attendees who have not purchased the RFP may review the addendum at the Miami-Dade Aviation Contracts Administration office.

It is the Proposer's sole responsibility to ensure that the Proposer receives any and all addenda or revisions resulting from the Pre-proposal Conference. Directly following the Pre-proposal Conference, the Department may provide the opportunity for local, small or disadvantaged businesses to meet and present their qualifications to potential Proposers. Department representatives will not be in attendance and therefore no questions will be answered by the Department regarding the RFP during this networking session. The Department in a written addendum to the RFP will address any additional questions that are raised during or after the networking session, and properly submitted for response in writing to the Contracting Officer.

#### **IV. RESPONSIBILITY OF PROPOSER**

It is the sole responsibility of each Proposer to become thoroughly familiar with the RFP requirements and all terms and conditions of the Agreement affecting the performance of this RFP. Pleas of ignorance by the Proposer of conditions that exist, or that may exist, will not be accepted as a basis for varying the requirements of the Department, or the compensation to be paid to the Concessionaire. It shall be the responsibility of each Proposer to examine the entire RFP document including the form of Agreement, project sites, ACDBE Letter of Intent and ACDBE Schedule of Participation, attachments, required forms and any addendum and evaluate all the circumstances and conditions affecting its proposal and its own expense and to become fully informed of the conditions to be encountered, of the character, quality and quantities from this contract to be performed and materials to be furnished and the operational activities of the Airport, which activities must be maintained without interference from this work.

#### **V. MODIFICATION OR WITHDRAWAL OF PROPOSAL**

##### **A. Modification of Proposal**

Any modification by the Proposer shall be submitted to the Clerk of the Board prior to the time and date set for the Proposal opening. The Proposer shall submit, in a sealed envelope, the Proposal forms and a letter, on company letterhead, signed by an authorized representative of the Proposer stating that the new submittal supersedes the previously submitted Proposal. No modifications of a Proposal shall be accepted after the Proposals have been opened.

##### **B. Withdrawal of Proposal**

Proposals shall be irrevocable unless the Proposal is withdrawn as provided herein. Only a written letter received by the Clerk of the Board prior to the Proposal due date and time may withdraw a Proposal. The withdrawal letter must be on company letterhead and signed by an authorized representative of the Proposer.

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**VI. LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

Proposals will be opened at the time and place specified in the advertisement for this RFP. Proposals received after the Proposal Due Date and time are late and may not be considered. Modifications received after the Proposal Due Date and time are also late and may not be considered. Letters of withdrawal received after the Proposal Due Date and time or after contract award, whichever is applicable, are late and may not be considered.

The responsibility for submitting a Proposal to the Clerk of the Board on or before the stated time and date is solely and strictly the responsibility of the Proposer. Miami-Dade County is not responsible for delays caused by any mail, package or courier service, including the U.S. mail, or caused by any other occurrence.

**VII. RULES, REGULATIONS AND LICENSING REQUIREMENTS**

The Concessionaire shall comply with all laws and regulations applicable to the goods and/or services contained in this RFP, especially those applicable to conflict of interest and collusion. The Concessionaire is presumed to be familiar with all federal, state and local laws, ordinances, codes, rules and regulations that may in any way affect the goods and/or services offered, especially Executive Order No. 11246 entitled "Equal Employment Opportunity" and as amended by Executive Order No. 11375, as supplemented by The Department of Labor Regulations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, Chapter 553 of Florida Statutes, and any and all other local, state and federal directives, ordinances, rules orders, and laws relating to people with disabilities.

**VIII. RFP POSTPONEMENT/CANCELLATION**

The Department may, at its sole and absolute discretion, reject any and all, or parts of any and all Proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the Proposals received as a result of this RFP.

**IX. COSTS INCURRED BY PROPOSERS**

All expenses involved with the preparation and submission of a Proposal to the County, or any work performed in connection therewith, shall be borne by the Proposer. No payment will be made for any response received or for any other effort required of or made by the Proposer prior to commencement of work as defined by a contract approved by the Board of County Commissioners.

**X. PROPRIETARY/CONFIDENTIAL INFORMATION**

Proposers are hereby notified that all information submitted as part of, or in support of Proposals will be available for public inspection after opening of Proposals in compliance with Chapter 119 Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this RFP that the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the

County in connection with this RFP shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Proposal as protected or confidential, the County shall endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the Proposal. The redaction or return of information pursuant to this clause may render a Proposal non-responsive.

## **XI. ADDITIONAL INFORMATION/ADDENDA**

Requests for additional information or clarifications must be made in writing and sent via fax to the Department's Contracting Officer for this RFP no later than fourteen (14) calendar days prior to the date originally established for opening of proposals. The request must contain the RFP number and title, Proposer's name, name of Proposer's contact person, address, phone number, and facsimile number. Electronic facsimile requesting additional information will be received by the RFP Contracting Officer at the fax number specified in this RFP. Facsimiles must have a cover sheet which includes, at a minimum, the Proposer's name, name of Proposer's contact person, address, number of pages transmitted, phone number, facsimile number, and RFP number and title.

The County will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda prior to the Proposal Due Date. Proposers should not rely on any representations, statements or explanations other than those made in this RFP or in any written addendum to this RFP. Where there appears to be conflict between the RFP and any addenda issued, the last addendum issued shall prevail. It is the Proposer's responsibility to assure receipt of all addenda. The Proposer should verify with the designated RFP Contracting Officer prior to submitting a proposal that all addenda have been received. Proposers are required to acknowledge the number of addenda received as part of their proposals by submitting the attached form, **"Acknowledgement of Addenda", Appendix D** with their Proposal.

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## SECTION 4

### EVALUATION/SELECTION PROCESS

#### I. EVALUATION/SELECTION PROCESS OVERVIEW

Following the opening of the Proposals for each package, the Proposals will be evaluated by an Evaluation/Selection Committee appointed by the County Manager. It is the responsibility of the Evaluation/Selection Committee to ensure that a Proposal submittal complies with all of the requirements of this RFP and assess it accordingly.

#### II. REVIEW OF PROPOSALS FOR RESPONSIVENESS AND RESPONSIBLENESS

Each Proposal will be reviewed to determine if the Proposal is compliant with the submission requirements outlined in the RFP. A responsive Proposal is one which follows the requirements of the RFP, includes all documentation, is submitted in the format outlined in the RFP, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in a Proposal being deemed non-responsive by the Office of the County Attorney.

The Evaluation/Selection Committee shall determine if the Proposal is responsible. In making these determinations, the Evaluation/Selection Committee shall have the right to investigate the management, operational experience, financial stability, reputation and business judgment of any Proposer and their management, including the conducting of investigations of the officers, directors, principal, stockholders, other principals, if any, of the business entity of the Proposer, its affiliates and parent company and the proposed management, and to review and investigate all contracts the Proposer has performed for the County or others. The Proposer agrees to provide upon request any additional information that may be required by the Committee or the Department. In addition, the Evaluation/Selection Committee reserves the right to inspect the locations at which the Proposer conducts its business and provides services.

#### III. EVALUATION PROCESS

It is the obligation of the Proposer to provide all information necessary for MDAD's evaluation according to the criteria listed in this RFP document and/or any addenda that may be issued. Evaluation criteria have been established based upon the goals and objectives as provided in this RFP. Based on the Evaluation/Selection Committee's evaluation of the written technical Proposal and oral presentations, if required, the Committee shall rate and rank for each package the responsive and responsible firms on their Technical Proposal based on the criteria listed below. The technical criteria listed below may not be of equal value or decision weight nor are they necessarily ranked in order of importance. A Proposer for a particular package may receive the maximum points or a portion of this score depending on the merit of its Proposal, as judged by the Evaluation/Selection Committee member in accordance with the criteria below.

The Packages will be evaluated in sequential order starting with Package One (1), then Package Two (2), then Packages Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8). The Packages will be recommended for award in that order of sequence.

#### IV. EVALUATION CRITERIA

##### **PART 1: Evaluation Criteria for Prime Concessionaires and Developers**

Each Proposer for a particular package will be evaluated on the basis of information provided in the written Proposal submittal using the following criteria. The technical proposal criteria are itemized with their respective weights for a maximum total of nine hundred (900) points per each voting Evaluation/Selection member per package. The written Proposal may be verified or clarified by the oral presentation, if any.

##### **TECHNICAL PROPOSAL EVALUATION**

<u>CRITERIA</u>	<u>MAXIMUM PTS</u>
1) Financial Capacity to Perform/Financing	50
2) Experience and Qualifications	150
3) Developing, Designing and Constructing (including, but not limited to the following:)	250
- Merchandising, Design and Layout Plan	
- Facilities Design & Construction Coordination	
- Local Theme	
4) Managing, Operating and Maintaining (including, but not limited to the following:)	250
- Facility Maintenance and Operations Plan	
- Management Plan	
- Local Management	
5) ACDBE Plan	100
6) Leasing/Subleasing Plan	100
<b>Total Technical Proposal Maximum Points</b>	<b>900</b>

##### **FINANCIAL PROPOSAL EVALUATION (MAG)**

<u>CRITERIA</u>	<u>MAXIMUM PTS</u>
1) MAG proposed	100
<b>Total Evaluation Points</b>	<b>1000</b>

The price MAG Proposal Forms (Appendix B) for Part 1 – for Prime Concessionaires and Developers will be assigned a maximum of one hundred (100) points per each Evaluation/Selection Committee member. The price MAG Proposal Forms will be evaluated in the following manner:

## MAG Criteria:

1. The responsive/responsible proposal with the highest MAG will be given the full weight of one hundred (100) points assigned to the MAG criterion.
2. Every other responsive/responsible proposal will be given points proportionately in relation to the highest responsive/responsible MAG. This point total will be calculated by dividing the MAG of the proposal being evaluated by the highest responsive/responsible MAG with the result being multiplied by the maximum weight for price (100 points) to arrive at a Financial Proposal score of less than the full score for the MAG.

Example:      Proposer's Proposed MAG      Total Points  
                 Highest Proposed MAG      x      for Price      =      Price Score

The price score will be added to the technical points for each evaluation selection committee member. The application of the above formula will result in a uniform assignment of points relative to the criterion of price. The formula is used as part of the evaluation process to determine the highest ranked Proposer.

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## **PART 2 - Evaluation Criteria for Direct Lessees:**

Each Proposer for a particular package will be evaluated on the basis of information provided in the written Proposal submittal using the following criteria. The technical proposal criteria are itemized with their respective weights for a maximum total of nine hundred (900) points per each voting Evaluation/Selection member per package. The written Proposal may be verified or clarified by the oral presentation, if any.

### **TECHNICAL PROPOSAL EVALUATION**

<u>CRITERIA</u>	<u>MAXIMUM PTS</u>
1) Financial Capacity to Perform/Financing	100
2) Experience and Qualifications	200
3) Developing, Designing and Constructing (including, but not limited to the following:)	250
- Merchandising, Design and Layout Plan	
- Facilities Design & Construction Coordination	
- Local Theme	
4) Managing, Operating, Maintaining, and Ownership (including, but not limited to the following:)	250
- Facility Maintenance and Operations Plan	
- Management Plan	
- Local management	
5) ACDBE Participation	100
<b>Total Technical Proposal Maximum Points</b>	<b>900</b>

### **FINANCIAL PROPOSAL EVALUATION (MAG)**

<u>CRITERIA</u>	<u>MAXIMUM PTS</u>
1) MAG Proposal	100
<b>Total Evaluation Points</b>	<b>1000</b>

The price MAG Proposal Forms (Appendix B) for Part 2 – for Direct Lease Packages will be assigned a maximum of one hundred (100) points per each Evaluation/Selection Committee member. The price MAG Proposal Forms will be evaluated in the following manner:

MAG Criteria:

1. The responsive/responsible proposal with the highest MAG will be given the full weight of one hundred (100) points assigned to the MAG criterion.

2. Every other responsive/responsible proposal will be given points proportionately in relation to the highest responsive/responsible MAG. This point total will be calculated by dividing the MAG of the proposal being evaluated by the highest responsive/responsible MAG with the result being multiplied by the maximum weight for price (100 points) to arrive at a Financial Proposal score of less than the full score for the MAG.

Example: 
$$\frac{\text{Proposer's Proposed MAG}}{\text{Highest Proposed MAG}} \times \text{Total Points for Price} = \text{Price Score}$$

The price score will be added to the technical points for each evaluation selection committee member. The application of the above formula will result in a uniform assignment of points relative to the criterion of price. The formula is used as part of the evaluation process to determine the highest ranked Proposer.

## V. OVERALL RANKING

After the MAG evaluation, the Evaluation/Selection Committee will then determine the overall ranking for each package by adding the aggregate Minimum Annual Guarantee evaluation score with the aggregate Technical evaluation score and all other applicable additional points specified in this RFP, if any, to determine the overall ranking. The Proposer with the highest points will be ranked first. A Proposer can be recommended for award for more than one Package.

In the event the overall ranking is calculated and a tie occurs between the highest rated Proposers, then the first tiebreaker will be consideration of local preference. If after the application of Section 2-8.5 of the Code (Local Preference), is applied and a tie still exists, then the Evaluation/Selection Committee shall be reconvened to allocate a maximum of five (5) points per voting Evaluation/Selection Committee member present at the oral presentations, for the construction design presented in the Proposals. Local Preference shall not apply if it results in a Local ACDBE gaining an advantage over a Non-Local ACDBE, a violation of Federal Regulations.

## VI. NEGOTIATIONS

The County may award the Lease and Concession Agreement for each Package on the basis of initial offers received, without discussion or negotiation. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

However, if it is determined that negotiations are necessary, a negotiation committee will be recommended by the evaluation selection committee, and upon appointment and authorization by the County Manager, the Negotiation Committee will proceed to negotiate with each of the recommended Proposers.

The County reserves the right to enter into contract negotiations with the recommended Proposer for each package, respectively. If the County and the recommended Proposer cannot

negotiate a successful contract, the Negotiation Committee may terminate said negotiations and begin negotiations with the next ranked responsive and responsible Proposer for the same package. This process may continue until an agreement is executed, for each Proposal or the County may reject all Proposals for any or all packages. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

## **VII. CONTRACT AWARD PER PACKAGE**

The Successful Proposer shall execute the attached Agreement within ten (10) calendar days after the County presents such Agreement to the Successful Proposer. This will occur prior to the filing of the contract award recommendation with the Clerk of the Board.

The contract award for each package, if any, shall be made to the Proposer whose Proposal shall be deemed by the Board to be in the best interest to the County. The Board's decision of whether to make the award and which Proposal is in the best interest of the County shall be final. Any one or all of the packages may be awarded on its own merit in the event of a delay of any particular package.

**Failure to provide required insurance and bonds, and to execute other required documents prior to award of any Agreement, or failure of the recommended Proposer to execute the Agreement as required above, may constitute a repudiation of the Respondent's Proposal and result in forfeiture of any deposits and bonds provided pursuant to the RFP.**

## **VIII. LOBBYIST REQUIREMENTS:**

In accordance with Section 2-11.1 (s) of the Miami-Dade County Code, prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioners, signed by the principal or the principal's representative, providing that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of this proposal as evidence that a proposer is not a responsible Proposer.

## **IX. LOCAL PREFERENCE**

Pursuant to Section 2-8.5 of the Code of Miami-Dade, the Local Preference is provided in accordance with the revised Ordinance No. 01-21, as amended:

1. Request for proposals, qualifications or other submittals and competitive negotiation and selection. If, following the completion of final rankings (technical and MAG price combined, if applicable) by the selection committee, a non-local business is the highest ranked Proposer, and the ranking of a local Proposer is within 5% of the ranking obtained by the non-local Proposer, then the highest ranked local Proposer shall have the opportunity to proceed to negotiations with the County under the applicable sections of this Code.

2. If a tie occurs between two (2) or more local businesses, then contract award on the basis of best and final bids (paragraph 2 (a) of the Ordinance), or the opportunity to proceed to negotiations (paragraph (a), above), shall be made to such local business having the greatest number of its employees that are Miami-Dade County residents.
3. The application of Local Preference to a particular purchase or contract may be waived upon written recommendation of the County Manager and approval of the Board of County Commissioners.
4. The preferences established herein in no way prohibit the right of the Board of County Commissioners to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the County Commission from giving any other preference permitted by law instead of the preferences granted herein.
5. In the event Broward, Palm Beach or Monroe County extend preferences to local businesses as defined herein, Miami-Dade County may enter into an interlocal agreement with such County wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by Broward, Palm Beach or Monroe County to do business in that County that authorizes the business to provide the goods, services or construction to be purchased, and a physical business address located within the limits of that County. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address.
6. The Proposer should complete, sign and submit the attached form, Appendix I, "Local Business Preference" with the Proposal, in order to be considered for Local Preference.

#### **X. RIGHTS OF PROTEST**

- A. A recommendation for contract award or rejection of award may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the Code of Miami Dade County, and as established in Administrative Order No. 3-21, as amended.
- B. To initiate a Proposal protest, the protester shall present to the Clerk a non-refundable filing fee, payable to the Clerk of the Board, in accordance with the schedule provided below:

<b><u>AWARD AMOUNT</u></b>	<b><u>FILING FEE</u></b>
\$25,001 - \$100,000	\$500
\$100,001 - \$500,000	\$1,000
\$500,001 - \$5 million	\$3,000
Over \$5 million	\$5,000

In the event a Proposer wishes to protest any part of the published requirements, terms and conditions or processes described in the Request, it must file a notice of protest, in writing,

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with MDAD no later than forty-eight (48) hours prior to the Proposal opening date and hour specified in the Request. Failure to file a timely notice of protest will constitute a waiver of proceedings.

- C. The foregoing notwithstanding, the protest may not challenge the relative weight of the evaluation criteria or the formulas specified for assigning points as described in the Request.
- D. Protests shall be submitted in writing to the Clerk pursuant to the procedures established in Section 2-8.4 of the Code and Miami-Dade County Administrative Order No. 3-21, and shall state with particularity the specific facts and grounds on which it is based, shall include all pertinent documents and evidence, and shall be accompanied by the corresponding filing fee.
- E. For award recommendations greater than \$100,000, the following shall apply:
- When a letter of intent to award a Proposal Request has been communicated (mailed, faxed or electronically mailed) to each competing Proposer and filed with the Clerk, a Proposer wishing to protest said award recommendation shall file a protest with the Clerk within ten (10) business days of the date of award recommendation letter. Within two (2) business days of that filing, the protester shall provide the Office of the County Attorney and each Proposer with a copy of each document that was filed with the protest. Failure to file the written protest in a timely manner as described herein, shall constitute a waiver of the right to protest the award recommendation.
- F. For award recommendations from \$25,000 to \$100,000, the following shall apply:
- Each Monday, in the lobby of the Stephen P. Clark Center, located at 111 N.W. 1<sup>st</sup> Street, Miami, Florida 33128, award recommendations are posted. Participants may also call the Awards Line at (305) 375-4724 or 1-800-510-4724, or the contact person identified on the cover page of the Request. Any Proposer wishing to protest such recommendations, shall file a protest with the Clerk within five (5) business days of the posting and submit a \$500 non-refundable filing fee.

## **XI. PROVISIONS OF LAW REQUIRING AFFIDAVITS AND CONDITION OF AWARD CERTIFICATES**

### **A. AFFIDAVITS:**

The Affidavits described below are part of a single execution affidavit:

#### **1. Public Entity Crimes Affidavit**

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, "Any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a bid solicitation to provide goods and/or services to a public entity, may not submit a bid on a bid solicitation with a public entity for construction or repair of a public building or public work, may not submit a bid on leases of real property to a

public entity, may not be awarded or perform work as a contractor or, supplier, or subcontractor or consultant under a bid solicitation with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.”

## **2. Debarment Disclosure Affidavit**

Section 10-38 of the Code of Miami-Dade County (“the Code”) relates to the debarment of any individual or other legal entity from County work. The Debarment Disclosure Affidavit requires the Respondent to affirm, under oath, that neither the Respondent, its officers, principals, directors, shareholders owning or controlling more than ten percent (10%) or more of the stock, partners, affiliates, as defined in the Code, nor its Subcontractors/Subconsultants, have been debarred by the County. Any individual or entity that has been debarred by the County is prohibited from entering into any contract with the County during the period for which they have been debarred. Debarment may also constitute grounds for termination of any existing County contract. It is the Respondent’s responsibility to ascertain this information before submitting the Qualification Statement.

## **3. Criminal Record Affidavit**

Pursuant to Section 2-8.6 of the Code, the Respondent must disclose, at the time the Qualification Statement is submitted, if the Respondent or any of its officers, directors, or executives have been convicted of a felony during the past (10) years. Failure to disclose such conviction may result in the debarment of the Respondent who knowingly fails to make the required disclosure or to falsify information.

Following contract award, if a principal of the contracting entity is convicted of a felony, the County may terminate the contract.

## **4. Disclosure of Ownership Affidavit**

Pursuant to Section 2-8.1(d)(1) of the Code, the Respondent shall disclose under oath their full legal name and business address. The Respondent shall also disclose the full legal name and business address of all individuals (other than Subcontractors/Subconsultants, materialmen, suppliers, laborers, or lenders) that has, or will have any interest (legal, equitable, beneficial or otherwise) in the contract transaction. If the contract is with a corporation, the full legal address shall be provided for each officer, director, and stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock. If the contract is with a partnership or joint venture, the full legal address shall be provided for each partner. If the contract or business transaction is

with a trust, the full legal name and address shall be provided for each trustee and each beneficiary. Post Office addresses are not acceptable.

In addition, pursuant to Section 2-8.1 (d)(2) of the Code, the Respondent shall disclose the composition of its workforce, as to race, national origin and gender, as well as the existence of a collective bargaining agreement with employees. The Respondent must also disclose whether they provide paid health care benefits for its employees.

#### **5. Affirmative Action Plan/Procurement Policy Affidavit**

Pursuant to Section 2-8.1.5 of the Code, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Business Development (DBD). The Respondent shall submit with its Qualification Statement the Affirmative Action Plan/Procurement Policy Affidavit, indicating one of the following: (i) that the firm's gross revenues are in excess of \$5 million and the firm has a current Affirmative Action Plan/Procurement Policy on file with DBD; or, (ii) that the firm's gross revenues are in excess of \$5 million and the firm will file an Affirmative Action Plan/Procurement Policy with DBD for approval; or, (iii) the firm's Board of Directors are representative of the population make-up of the nation and is exempt from this requirement; or, (iv) the firm's annual gross revenues do not exceed \$5 million and therefore Section 2-8.1.5 of the Code is not applicable.

#### **B. CONDITION OF AWARD REQUIREMENTS**

1. The affidavits described below are part of a single execution affidavit that should be submitted with the Qualification Statement. If a Respondent does not submit said condition of award affidavits with its Qualification Statement, the Respondent should state in its Qualification Statement when such affidavits will be provided, which shall be no later than with the execution of the Agreement as provided in Section 4.6 herein.

##### **a. Disability Nondiscrimination**

Pursuant to County Resolution No. R-182-00, amending Resolution No. R-385-95, the Respondent shall, as a condition of award, provide written certification that the firm is not in violation of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Federal Transit Act, the Fair Housing Act, nor any other laws prohibiting discrimination on the basis of disability. Any post-award violation of these Acts may result in the contract being declared void. If any certifying Respondent or their affiliate is found in violation of the Acts, the County will conduct no further business with such attesting firm. Any violation of this Resolution may result in debarment.

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**b. Family Leave**

Pursuant to County Resolution No. R-183-00 , the Respondent shall, as a condition of award, provide written certification that the firm provides family leave to their employees as required by the County's family leave policy. Failure to comply with the requirements of this Resolution may result in debarment.

**c. Domestic Leave**

Pursuant to County Resolution No. R-185-00, the Respondent shall, as a condition of award, provide written certification that the firm is in compliance with the County's domestic leave policy. Failure to comply with the requirements of this Resolution, may result in the contract being declared void, the contract being terminated, and/or the firm being debarred. The obligation to provide domestic leave to their employees shall be a contractual obligation.

**d. Currently Due Fees and Taxes**

Pursuant to Section 2-8.1(c) of the Code, the Respondent shall, as a condition of award, verify that all delinquent and currently due fees or taxes - including but not limited to real and property taxes, utility taxes and occupational licenses - collected in the normal course by the County Tax Collector, as well as County issued parking tickets for vehicles registered in the name of the Respondent, have been paid. Failure to comply with this requirement may result in debarment.

**e. Drug Free Workplace**

Pursuant to Section 2-8.1.2(b) of the Code, no person or entity shall be awarded or receive a County contract for public improvements unless such person or entity certifies that it will provide a drug free workplace. Failure to comply with this requirement may result in debarment for those persons or entities that knowingly violate this policy or falsify information.

**f. Current in County Obligations**

Pursuant to Section 2-8.1(h) of the Code, no individual or entity shall be allowed to receive any additional County contracts, if it is in arrears in any payment under a contract, promissory note or other loan document with the County, or any of its agencies or instrumentalities, including the Public Health Trust, either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of the Code, until either the arrearage has been paid in full or the County has agreed in writing to a payment schedule. Any contract or transaction entered into in violation of Section 2-

8.1(h) of the Code shall be voidable. Failure to meet the terms and conditions of any obligation or repayment schedule with the County shall constitute a default of the subject contract and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the County.

**g. Code of Business Ethics**

Pursuant to Section 2-8.1(i) of the Code, each person or entity that seeks to do business with the County shall adopt a Code of Business Ethics ("Ethics Code") and shall, prior to the execution of any contract between the Entity and the County, submit an affidavit stating that it has adopted an Ethics Code that complies with the requirements of Section 2-8.1(i) of the Code. If the Entity fails to submit the required affidavit, it shall be ineligible for contract award.

**2. Subcontracting documents not part of single execution affidavit:**

**a. Subcontracting Policies**

Pursuant to Section 2-8.8(4) of the Code, the Respondent on County contracts, wherein subcontractors/subconsultants may be used, shall, prior to contract award, provide a detailed statement of their policies and procedures for awarding subcontracts which:

- (i) notifies the broadest number of local subcontractors/ subconsultants of the opportunity to be awarded a subcontract;
- (ii) invites local subcontractors/subconsultants to submit bids in a practical, expedient way;
- (iii) provides local subcontractors/subconsultants access to information necessary to prepare and formulate a subcontracting bid;
- (iv) allows local subcontractors/subconsultants to meet with appropriate personnel of the Respondent to discuss the Respondent's requirements; and
- (v) awards subcontracts based on full and complete consideration of all submitted proposals and in accordance with the Respondent's stated objectives.

The Respondent who fails to provide the required statement shall be precluded from receiving the contract.

**b. Listing of Subcontractors/Subconsultants and Suppliers**

Section 10-34 of the Code requires that on County or Public Health Trust contracts, which involve the expenditure of \$100,000 or more, that the entity contracting with the County shall, as a condition of award, provide a listing which identifies all first tier Subcontractors/Subconsultants who will perform

any part of the contract work, describes the portion of the work such subcontractor/subconsultant will perform, identifies all suppliers who will supply materials for the contract work directly to the Respondent, and describes the materials to be so supplied.

A Respondent who is awarded the contract shall not change or substitute first tier subcontractors/subconsultants, direct suppliers, the portions of the work to be performed, or the materials to be supplied from those identified in the listing provided, except upon written approval by the County.

**THE FORM CONTAINED IN APPENDIX J, OR A COMPARABLE LISTING MEETING THE REQUIREMENTS OF SECTION 10-34 OF THE CODE , MUST BE COMPLETED AND SUBMITTED EVEN THOUGH THE PROPOSER MAY NOT UTILIZE SUBCONSULTANTS OR SUPPLIERS FOR THIS PROPOSAL. THE PROPOSER SHOULD ENTER THE WORD "NONE" UNDER THE APPROPRIATE HEADING (S) ON THE ATTACHED FORM, APPENDIX J, IN THOSE INSTANCES WHERE NO SUBCONSULTANTS AND/OR SUPPLIERS WILL BE USED ON THIS PROPOSAL.**

3. Proof of Authorization to do Business:

Pursuant to Florida Statutes Section 607.0128 F.S, Respondent must attach a copy of the Certificate of Status or Authorization, and certificate evidencing compliance with the Florida Fictitious Name Statute per Florida Statutes Section 865.09, (if applicable.)

**XII. CONE OF SILENCE**

Pursuant to Section 2-11.1(t) of the County Code and Administrative Order 3-27 ("Cone of Silence Provisions"), as amended, a "Cone of Silence" is imposed upon RFPs, RFQs, or bids after advertisement and terminates at the time the County Manager issues a written recommendation to the Board of County Commissioners. The Cone of Silence prohibits communication regarding RFPs, RFQs, or bids between: A) potential vendors, service providers, bidders, lobbyists or consultants and the County's professional staff including, but not limited to, the County Manager and the County Manager's staff; B) a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs; C) the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and the County Manager's staff; D) a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee assigned to this Solicitation; E) the Mayor, County Commissioners or their respective staffs and member of the selection committee assigned to this Solicitation; F) any member of the County's professional staff and any member of the selection committee therefore.

**Section 2.11.1(t) of the County Code and Administrative Order 3-27, as amended, permits oral communications regarding a particular RFP, RFQ or bid for solicitation of goods or services between any person and the procurement officer responsible for administering the procurement process for such RFP, RFQ, or bid, provided that the**

**communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.**

The Cone of Silence Provisions do not apply to oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meetings, public presentations made to the Board of County Commissioners during any duly noticed public meeting, or communications in writing at any time unless specifically prohibited by the applicable RFP, RFQ, or bid document. Proposers must file a copy of any written communications with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be submitted via e-mail to the Clerk of the Board at [CLERKBCC@MIAMIDADE.GOV](mailto:CLERKBCC@MIAMIDADE.GOV). The Contracting Officer shall respond in writing and file a copy with the Clerk of the Board, which shall be made available to any person upon request.

In addition to any other penalties provided by law, violation of the Cone of Silence Provisions by any proposer and bidder shall render any RFP award, RFQ award, or bid award voidable. Any person having personal knowledge of a violation of the Cone of Silence provisions shall report such violation to the State Attorney and/ or may file a complaint with the Ethics Commission. Proposers should reference the actual Cone of Silence Provisions for further clarification. All Proposers will be notified in writing when the County Manager makes an award recommendation to the Board of County Commissioners.

### **XIII. INDEPENDENT PRIVATE SECTION INSPECTOR GENERAL REVIEW**

Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of this Proposal, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Proposer shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Proposer's cost/price for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Proposer, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Proposer in connection with this RFP or any contract issued as a result of this Proposal. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Proposer or third party.

### **XIV. MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any Contract issued as a result of this Proposal shall be one quarter (1/4) of one (1) percent of the total

contract amount which cost shall be included in the total proposed amount. The audit cost will be deducted by the County from progress payments to the Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under \$1,000; (i) management agreements; (j) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (k) federal, state and local government-funded grants; and (l) interlocal agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above.

#### **XIV. ORDINANCES, RESOLUTIONS AND/OR ADMINISTRATIVE ORDERS**

To request a copy of any ordinance, resolution and/or administrative order cited in this RFP, the Proposer must contact the Clerk of the Board at 305-375-5126.

#### **XV. NONEXCLUSIVITY**

This RFP is nonexclusive in character and in no way prevents the County from entering into an Agreement with any other parties for the sale or offering of competitive services, products or items by others in other Locations at the Airport during the term of the Agreement.

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## SECTION 5

### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES

#### I. ACDBE REQUIREMENTS:

It is the policy of the County that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations. The County has established an ACDBE overall goal for Package One of 30% of gross revenues, an ACDBE goal for Package Two of 30% of gross revenues. The ACDBE overall goal for each package can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues.

The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with **Appendix C, Section II** and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 180 days after beneficial occupancy and monthly thereafter, on or before the 10<sup>th</sup> of every month.

#### II. COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.
2. When an ACDBE performs as a participant in a joint venture, a portion of the total dollar value of the contract **during the complete contract term**, equal to the distinct clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in **Appendix C**.
3. Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:
  - (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture

Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

- (b) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.
- (c) If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.
- (d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

4. MDAD's decision on commercially useful function matters are final.

### III. ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:

Proposers may decide to satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23. A **"joint venture" or ("JV")** shall mean and may be referred to as an "association" of two or more businesses acting as a concessionaire and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The joint venture agreement must specify the following:

- (1) Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and locations.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten hours per week.

- 
- (2) Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the ACDBE **Appendix 4** form, Monthly reports providing details of how the performance objectives were achieved and providing documentation of that achievement on the ACDBE Appendix 4 form. This information should include, but not be limited to:
- a. Details of training sessions, including class rosters and lesson plans.
  - b. Deliverables and work products.
  - c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
  - d. Proof that employees of partners actually work for them (payroll, payroll tax returns and the like).
- (3) Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.
- (4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

As described below, each Proposer must submit, as part of its Proposal, a plan for the achievement of the ACDBE goal, including Schedule of Participation and the Letter of Intent from ACDBE's who are Certified or have applied for Certification to the Miami-Dade County Department of Business Development as required by Airport Concession Disadvantaged Business Enterprise Participation Plan (ACDBE).

Without limiting the requirements of the Agreement, the County will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

#### **IV. CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

In order to participate as an ACDBE on this contract, an ACDBE must be certified or have applied for certification to the Miami-Dade County Department of Business Development (DBD) at the time of Proposal submittal.

Application for certification as an ACDBE may be obtained by contacting the Miami-Dade County Department of Business Development (DBD) located at 111 NW 1<sup>st</sup> Street, Stephen P. Clark Center, 19<sup>th</sup> floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111 or facsimile at (305) 375-3160, or visit their website at [www.co.miami-dade.fl.us/DBD/](http://www.co.miami-dade.fl.us/DBD/).

The ACDBE Certification List is maintained and published at least every other week by the Department of Business Development (DBD) and contains the names and addresses of

currently certified Airport Concession Disadvantaged Business Enterprise (ACDBEs) certified by them.

**V. AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:**

The Successful Proposer acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Disadvantaged Business

Enterprise Programs, are applicable to the activities of the Successful Proposer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not be limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Successful Proposer has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

The Agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23. The Successful Proposer agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any lease and concession agreement covered by 49 CFR Part 23.

The Successful Proposer agrees to include the above statements in any subsequent lease and concession agreements.

**VI. ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:**

Consistent with the goal of providing ACDBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 5 "Airport Concession Disadvantaged Business Enterprise"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

- 
- A. Shop Store Operations
- (1) Passenger profile analysis
  - (2) Cash handling/sales audit
  - (3) Enhancing sales
  - (4) Selling to the customer
  - (5) Staffing to meet customer levels
  - (6) Opening and closing procedures
- B. Personnel
- (1) Employment practices
  - (2) Compliance with wage and hour laws
  - (3) Compliance with County and Airport requirements
  - (4) Designing compensation and benefits plans
  - (5) Management and staff training to enhance product knowledge and customer service
  - (6) Warehousing packaging and sales reporting of merchandise
- C. Shop Design and Display
- (1) Retail layout
  - (2) Merchandising techniques
  - (3) Visual display techniques
- D. Loss Prevention
- (1) External and internal theft
  - (2) Shop security
- E. Books, Records and Reports
- (1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.
  - (2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Proposer shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.

- 
- (3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).

**VII. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:**

The Successful Proposer shall contract with those firm(s) as are listed on the Successful Proposer's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department

The County shall monitor the compliance of the Successful Proposer with the requirements of this provision during the term of this agreement.

The County shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records, records of expenditures, contracts between the Successful Proposer and the ACDBE Participant, and other records pertaining to the ACDBE Participation Plan.

If at any time the County has reason to believe that the Successful Proposer are in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the agreement in whole or in part, unless the Successful Proposer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the County upon the Successful Proposer except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Director.

## **SECTION 6**

### **FORM OF LEASE AND CONCESSION AGREEMENT**

**Attached are two forms of Lease and Concession Agreement. The Concessionaire Agreement is for the Prime Concessionaire and Direct Lessee. The second Agreement is designed for a Developer.**

**It is incumbent on the Proposer to carefully consult the prepared Form of Agreements set forth in this Section.**

**FORM OF LEASE AND CONCESSION**

**AGREEMENT**

**BY AND BETWEEN**

**MIAMI-DADE COUNTY, FLORIDA**

**AND**

---

**CONCESSIONAIRE**

**FOR RETAIL CONCESSION PROGRAM**

**AT**

**MIAMI INTERNATIONAL AIRPORT**

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## DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The terms "**Agreement**" shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term "**Airport**" shall mean Miami International Airport.

The term "**Approved Improvements**" are the improvements to a Location, which have been approved by the Department which may include the design, equipment, fixtures, flooring, and signage.

The term "**Base Building Work**" shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Locations in Shell Condition.

The term "**Beneficial Occupancy**" shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received.

The term "**Board**" shall mean Board of County Commissioners of Miami-Dade County.

The term "**Capital Improvement Program**" or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The term "**Code**" shall mean the Code of Miami-Dade County, Florida.

The term "**Common Logistics Fee**" shall mean an amount to be invoiced as a separate line item and collected from Sub-tenants by the Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program. The Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term "**Common Logistics Program**" shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term "**Concessionaire**" shall mean the person, firm, or entity that enters into this Lease and Concession Agreement with the County.

The term "**Consumer Price Index**" or "**CPI**" shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

The term "**County**" shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term "**Days**" shall mean calendar days, unless specifically stated as other.

The term "**Department**" or "**MDAD**" shall mean the Miami-Dade Aviation Department.

The term "**Direct Lease**" shall mean the Concessionaire that will not Sub-Lease Locations but will operate all Locations.

The term "**Director**" shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term "**Airport Concession Disadvantaged Business Enterprises**" or "**ACDBE**" shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprises".

The term "**Extension**" shall mean the addition of one (1) separate two (2) year term following the Operational Term.

The term "**Gross Revenues**", as used in this Agreement, shall mean all monies paid or payable to and consideration of determinable value received by the Concessionaire or its Sub-tenants in operation under the Agreement, regardless of when or where the order therefor is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a Departmental approved marketing plan, or (iii) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services.

The term "**Gross Receipts**" shall mean Gross Revenues received by Concessionaire as a result of operations pursuant to Concessionaire's Sub-Lease of a Location to an approved Sub-tenant.

The term "**Interim Term**" shall mean as ascribed in Article 1.01.

The term "**Lease Effective Date**" shall mean the tenth (10th) business day after the date of execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the concession locations as depicted on Exhibit A, "Locations".

The term **"Location Storage"** shall mean up to 20% of the retail space permitted for storage within the Locations.

The term **"Location Commencement Date"** shall mean for each Location, the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date.

The term **"Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Sub-Article 3.01 of this Agreement.

The term **"Minimum Monthly Guarantee"** shall mean as ascribed in Sub-Article 3.01 of this Agreement.

The term **"Nonexclusivity"** shall mean as ascribed in Sub-Article 1.10 of this Agreement.

The term **"Market Basket "** shall mean that MIA concession store prices shall not exceed by more than 10% stated market basket of a selection of three (3) Greater Miami Area locations where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels.

The term **"North Terminal"** shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Operational Term"** shall mean as ascribed to in Article 1.02.

The term **"Prime Concessionaire"** shall mean the Concessionaire who operates one or more Locations(s) and sub-leases one or more Locations(s).

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-05-05.

The term **"Refurbishment of Locations"** shall mean the refurbishment and expenditure by the Concessionaire or its Sub-tenants of not less than fifty dollars per square foot (\$50.00 psf) for Approved Improvements to begin no earlier than the fifth (5<sup>th</sup>) Operational Term year of the Agreement and be completed no later than the last day of the fifth (5<sup>th</sup>) Operational Term year of this Agreement.

The term **"Request for Proposal" or "RFP"** shall mean this RFP No. MDAD-05-05 and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Retail"** when used in this Agreement shall mean that newsstand and retail Locations as depicted in Exhibit A of the Lease and Concession Agreement.

The term **"Retail Concession Design Guidelines"** shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in Exhibit E.

The term "**Shell Condition**" shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("**HVAC**"), fire alarm system and fire sprinkler system.

The term "**Small Business**" shall mean a business with annual gross sales of five million dollars or less, regardless of the number of employees.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term "**State**" shall mean the State of Florida.

The term "**Sub-Lease**" shall mean the contractual agreement between the Concessionaire and its Sub-tenant.

The term "**Sub-tenant**" shall mean any person, firm, entity or organization, entering into an agreement with Concessionaire for sale of retail products to the public at the Airport at a Location.

The term "**TSA**" shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall mean the date approved by the Department for the Concessionaire to commence construction of a Location.

**FORM OF LEASE AND CONCESSION AGREEMENT  
FOR A NON-EXCLUSIVE  
CONCESSIONAIRE  
FOR RETAIL CONCESSION PROGRAM  
AT  
MIAMI INTERNATIONAL AIRPORT**

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and \_\_\_\_\_, ("Concessionaire"), a \_\_\_\_\_ Corporation authorized to do business in the State of Florida.

**RECITALS:**

**WHEREAS**, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

**WHEREAS**, the Department desires to create a retail concessions program in conjunction with the development program for the North, and South Terminal projects; and

**WHEREAS**, the concessions program is designed to provide a locally, nationally, and internationally recognized themed tenant base; and

**WHEREAS**, the retail concessions program will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

**WHEREAS**, Request for Proposal, RFP No. MDAD-05-05 was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Concessionaire,

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**ARTICLE 1 – TERM, EXTENSION AND LOCATIONS**

- 1.01 INTERIM TERM:** The County hereby leases to the Concessionaire the Locations depicted in Exhibit A for the Interim Term which commences on the Lease Effective Date and terminates on the earlier to occur of: 1) the first day of the month following Beneficial Occupancy of the last Location to complete the required improvements pursuant to Sub-Article 4.01, Improvements To Location, or 2) the first day of the month following three hundred and sixty-five (365) Days after the Lease Effective Date. Notwithstanding the above, the Interim Term may be extended by the County for unforeseen delays.

**1.02 OPERATIONAL TERM:** The County hereby leases to the Concessionaire the Locations depicted in Exhibit A commencing upon the termination of the Interim Term of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8) year thereafter unless sooner terminated. In no event shall this Agreement afford Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

**1.03 EXTENSION:** At the sole discretion of the County, the initial eight (8) year Operational Term may be extended for a maximum of one (2) year term provided the extension is mutually agreed to by the County and the Concessionaire in writing.

In the event the County elects to extend the Agreement, the Concessionaire shall be notified, in writing, no less than three hundred and sixty-five (365) Days prior to the expiration of the Operational Term. The Concessionaire may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

In the event the Concessionaire is in default, pursuant to Article 12, Default and Termination by County, of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

**1.04 LOCATIONS:** The Department hereby identifies to the Concessionaire the Locations as depicted in Exhibit A, Locations.

**1.05 LOCATION STORAGE:** The Department hereby identifies to the Concessionaire the Locations Storage as depicted in Exhibit A, Locations.

**1.06 SUPPORT SPACE:** In addition to the Locations provided to the Concessionaire in Sub-Article 1.04, Locations, the Department may provide administrative and support space, if available, to the Concessionaire.

The Concessionaire shall pay monthly rental payments for the Concessionaire's administrative and support space is at the rate applicable for terminal rental payments and annual adjustments as provided for in Sub-Article 3.06, Annual Rental.

**1.07 STORAGE SPACE:** The Department may make available to the Concessionaire, in addition to Location Storage, storage space outside of Location(s), if available.

**1.08 COMMON WAREHOUSE SYSTEM:** Due to the fact that storage space is limited in this Agreement and such space is separate from the Locations, should the Concessionaire determine, in its sole discretion, the need to use off-Airport properties for storage space, the Concessionaire shall be entitled through itself, or through an independent third-party contractor, to operate a common logistical support service with respect to the delivery and storage of Sub-tenants' merchandise, inventory, equipment and supplies to a central commissary warehouse location off of the Airport and the re-delivery of Sub-tenants' merchandise, inventory, equipment and supplies to each of the Sub-tenants' Locations at

the Airport as may be approved by the Department. The Department may elect to initiate a Common Logistics Program to assist in storage, delivery equipment and supplies in which case a Common Logistics Fee may be assessed to Concessionaire.

In the event of a Department initiated Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and/or the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of equipment needed to operate such program), as may be determined by the Department from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Concessionaire shall not be entitled to charge Sub-tenants for any of the Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Concessionaire as part Common Logistics Fee shall not be included in Concessionaire's Gross Revenues for any and all purposes of this Agreement. It is recognized by the Department that any such payments by Sub-tenants to the Concessionaire shall not be included in the calculation of the Percentage Fee, if any, from Concessionaire to the Department as provided for in Sub-Article 3.03, Percentage Fee to the County. The Department reserves the right to approve such program and review the basis of the actual costs and allocation thereof should the Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to require that the Concessionaire impose the Common Logistics Fee in a non-discriminatory manner.

**1.09 ADDITION, DELETION AND MODIFICATION OF LOCATIONS:**

- A. ADDITION OF LOCATIONS:** If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional Location to the Concessionaire upon written notification. The Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional Location. Acceptance of any additional Location will require the Department and the Concessionaire to mutually agree upon an applicable retail category as described in Exhibit L at the applicable category percentage fee, Sub-Article 3.05, Retail Category Percentage Fee, prior to final approval.
- B. ADDITION OF TEMPORARY LOCATIONS:** The Department reserves the right to require the Concessionaire to provide, and cause to be operated, temporary locations. Any rents for these locations are subject to the terms of this Agreement. The square footage for these temporary locations shall not be included in the calculation of the Minimum Annual Guarantee pursuant to Sub-Article 3.01. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.
- C. DELETION OR MODIFICATION OF LOCATIONS:** The Department reserves the right, at its sole discretion, to delete or modify any of the Locations, or any

administrative support and storage space due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Concessionaire or its Sub-tenants (except for reimbursement of the unamortized costs, pursuant to Sub-Article 4.10) for any inconvenience or loss of business as a result of the deletion or modification of any Locations or other space pursuant to this Sub-Article.

**D. ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations or other space pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in Sub-Articles 1.04, Locations, 1.05, Location Storage, 1.06, Support Space, and 1.07, Storage Space, and total payments due the Department in accordance with Article 3, Rentals, Payments and Reports, and Article 2, Use of Locations.

**1.10 NONEXCLUSIVITY:** This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other concessionaires and/or others in other locations at the Airport during the Interim Term, Operational Term, or any Extension thereto of this Agreement.

**1.11 CONDITION OF THE LOCATIONS: CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS** including: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Concessionaire to the Department, including any statements relating to the potential success or profitability of such Proposal. Concessionaire represents and warrants that it has made an independent investigation of all

aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Concessionaire accepts the Locations in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Locations to the requirements of applicable law, the Concessionaire assumes sole responsibility for any such work.

**1.12 CAPITAL IMPROVEMENT PROGRAM:** The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE INTERIM TERM, OPERATIONAL TERM AND ANY EXTENSION OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.

**1.13 REQUEST FOR PROPOSAL INCORPORATED:** The Concessionaire acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

## ARTICLE 2 – USE OF LOCATIONS

- 2.01 LOCATIONS:** The Locations as referenced in Exhibit A, Locations shall be used solely for their assigned and approved concept category unless otherwise modified pursuant to Sub-Article 2.04, New Concepts. Failure to maintain the concept category pursuant to Article 2, Use of Locations, may result in penalties as indicated in Sub-Article 3.24, Penalties.
- 2.02 USE OF LOCATIONS:** The Concessionaire shall have the right, privilege, and obligation to finance, design and construct, lease, manage, operate, and maintain the Locations, depicted in Exhibit A, Locations, for the purpose of establishing high quality, state of the art retail concessions as approved by the Department.
- 2.03 CONCESSIONAIRE SERVICES AND SALES RIGHTS:** The Concessionaire shall not allow any services or the sale of any item or product not specifically covered by the categories approved in this Agreement. Any such sales by the Concessionaire or Concessionaire's Sub-tenants of services, products, or items not specifically approved

herein, in writing by the Department, may constitute a violation. In the event of such violation, the Concessionaire shall discontinue or cause its Sub-tenants to discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Concessionaire or its Sub-tenants to discontinue such sales within 24 hours shall subject the Concessionaire to penalties pursuant to Sub-Article 3.24, Penalties. Upon the assessment of thirty (30) Days of penalties as to a Location for a Location operated by a Sub-tenant, the Concessionaire shall tender a notice of default to the Sub-tenant(s) in violation, with copies of said default notice to the Director and pursue all remedies available in law and equity to cease such actions. Failure of the Concessionaire to: (i) notify the Sub-tenant(s) of the default, (ii) pursue all remedies available to cease the unauthorized sales or services shall be an event of default and grounds for termination of this Agreement. Upon the assessment of thirty (30) Days of penalties against a Concessionaire for violation committed by such Concessionaire, a notice of default will be tendered.

**2.04 NEW CONCEPTS:** The Concessionaire and the Department may modify, by mutual agreement, certain concepts within the established categories and among the Locations. The proposed new concept as agreed to by the Department and the Concessionaire will be reflected in a revised Exhibit A, a revised Percentage Fee as applicable for the category as provided for in Article 3, Rentals, Payments and Reports, and a revised Article 2, Use of Locations.

**2.05 SCOPE OF SERVICES:** The Concessionaire hereby agrees that it will finance, design and construct, lease, manage, operate and maintain the Locations depicted in Exhibit A, Locations, for the purpose of establishing high quality, state of the art retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

**A. Financing:**

Be capable of financing the design, construction and build out of the Locations depicted on Exhibit A, Locations.

Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Locations.

**B. Developing:**

The Concessionaire shall design a concession program to fulfill the concept categories and submit initially and annually a merchandising and layout plan identifying the product categories within each Location for each Location. The Concessionaire will be responsible for updating the store layout plan and merchandising plan no less than annually or as necessary throughout the Interim Term, Operational Term and any Extension of this Agreement, providing suggestions as needed for Sub-tenants for each concept for consideration by the Department.

**C. Design and Construction Coordination:**

Design and Construction Coordination requirements are detailed in Sub-Article 4, Improvements to the Locations.

**D. Leasing:**

The Concessionaire shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.
2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, if subleasing is conducted, in accordance with Article 19, Sub-Leases, of the Lease and Concession Agreement no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement.
3. Perform background checks and investigate all prospective sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:
  - a. Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.
  - b. Preparing term sheets of potential Sub-tenant deals, outlining all business terms for the Department's approval.
  - c. List of use and products for each concept.
5. Prepare the appropriate Sub-tenant lease agreement and exhibits.

Sub-Lease agreements shall:

- (1) Not extend beyond the expiration date or termination date of the Lease and Concession Agreement.
- (2) Contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement.

**E. ACDBE Plan**

1. Maximize ACDBE and local participation by meeting or exceeding the ACDBE goal under this Lease and Concession Agreement.
2. Develop, implement, manage, and monitor a program to identify and include Local/Small/ACDBE businesses in the concession programs.
3. Describe the extent and type of ACDBE subleasing in the Program.
4. Submit a ACDBE community and local business opportunities outreach program for concession opportunities, subject to the Department's approval.

## **F. Managing**

The Concessionaire shall, if applicable:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the Agreement identifying the product categories for each Location. The Concessionaire will review the store layout plan no less than annually and update the store layout as necessary throughout the Agreement.
2. Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any sub-lease concession agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for each Location leased.
6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its financial capacity to perform its obligations under the terms of the Agreement.

## **G. Operating**

The Concessionaire shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month, by Sub-tenant, if applicable, by Location, concession category, and product category to be updated on a regular basis.

4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department
6. Ensure compliance, or cause Sub-tenants to comply with the Department and other governmental agency ID Badging requirements.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance. The Concessionaire and/or its Sub-tenants will submit its/their customer service-training program within thirty (30) Days of the Lease Effective Date of the Agreement, for the Department's review and approval.
10. Coordinate and implement regular employee customer service training programs, to include employees from both the Concessionaire and its Sub-tenants, if applicable.
11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

#### **H. Maintaining**

The Concessionaire shall:

1. Maintain or cause to maintain the Locations pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Location in acceptable condition as required by the Department./\*3/\*

**2.06 ANNUAL PLAN SUBMISSION:** The Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) Days after receipt of the foregoing plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Concessionaire shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

The Department reserves the right to request at any time any further submission of plans.

- 2.07 PROHIBITED ACTIVITIES:** Without limiting any other provision herein, Concessionaire or its Sub-tenants shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Concessionaire or its Sub-tenants to perform its maintenance and repair obligations under this Agreement, Concessionaire or its Sub-tenants shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

### ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

- 3.01 MINIMUM ANNUAL GUARANTEE (MAG):** As consideration for the privilege to engage in business at Miami International Airport, Concessionaire shall pay the Department the amount of \_\_\_\_\_ annually as may be reduced by the prorated amount stated below and subject to recalculation pursuant to Sub-Article 3.03, Recalculation of the Minimum Annual Guarantee, inclusive of Location and Location Storage rent.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law.

Rent is \$56.49 per square foot annually for the lease of the Locations in Exhibit A, Locations, and \$28.25 per square foot annually for the lease of Location Storage in Exhibit A, Locations for the FY05.

Commencing upon the first day of the month after the earlier to occur of (i) Location Commencement Date of each Location or (ii) first day of the Operational Term, Concessionaire shall pay the MAG or prorated MAG, if applicable.

**Example for the prorated Minimum Annual Guarantee calculation:**

Commencing upon Location Commencement Date of each Location and Location Storage:

<u>Location</u>	<u>Square Footage</u>	<u>Percent</u>
South Terminal	1,000	50%

Total square footage is divided by the square footage of Location and Location Storage which have received Beneficial Occupancy or for which 120 Days have elapsed after the Turnover Date for such Location and Location Storage.

The total square footage of Location and Location Storage depicted on Exhibit A, Locations of 2,000 square feet divided by the Location and Location Storage square footage of 1,000 receiving Beneficial Occupancy or for which 120 Days have elapsed after Turnover Date equals the percentage rate to be applied to the MAG. If the MAG is \$10,000.00 dollars, then 50% of the MAG is \$5,000.00 dollars, which is due and payable in twelve equal monthly payments on or before the first day of each month, in advance, without billing or demand, plus applicable state taxes as may be required by law.

**3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS:** The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of Sub-Article 3.01, Minimum Annual Guarantee, and Sub-Article 3.04, Percentage Fee to the Department, are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in Sub-Article 22.11, Force Majeure. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Interim Term, Operational Term and any Extension of this Agreement. If the Concessionaire's Locations are so damaged as to significantly impact the Concessionaire's operations for a period in excess of seventy two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by Sub-Article 6.01, Department Services".

**3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE:** The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

**3.04 PERCENTAGE FEE TO THE DEPARTMENT:** The Concessionaire shall pay the Department the total percentage fee of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater, for each Location. The monthly percentage fee shall be due on the tenth (10<sup>th</sup>) Day of the month following the month during which the monthly gross revenues were received or accrued.

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Occupancy for each Location.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to Sub-Article 3.19, Annual

Audit, are considered as having been due on the tenth (10<sup>th</sup>) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

To the extent the Concessionaire and the Department mutually agree to change a concept category for a particular Location, then the corresponding percentage fee, as listed per category in Sub-Article 3.05, Retail Category Percentage Fee, will be adjusted accordingly.

- 3.05 RETAIL CATEGORY PERCENTAGE FEE:** The Concessionaire shall pay the Department the Percentage Fee for the corresponding category. The Concessionaire percentage will be paid for all Locations operated by the Concessionaire and Sub-tenant percentage for all Locations sub-leased.

The following is the applicable "Percentage Fee per Category" acceptable for each concept category. See RFP, Sub-section 2 XII.

CONCEPT CATEGORY	COLUMN A CONCESSIONAIRE PERCENTAGE	COLUMN B SUB-TENANT PERCENTAGE
<b>RETAIL</b>		
<b>Bookstores</b>	<b>12%</b>	<b>9%</b>
<b>News &amp; Gifts</b>	<b>19%</b>	<b>16%</b>
<b>Newsstands</b>	<b>16%</b>	<b>13%</b>
<b>Entertainment &amp; Electronics</b>	<b>11%</b>	<b>8%</b>
<b>Fashion Apparel &amp; Accessories</b>	<b>14%</b>	<b>11%</b>
<b>Gift Specialty Shops</b>	<b>16%</b>	<b>13%</b>
<b>Jewelry, Watches &amp; Accessories</b>	<b>17%</b>	<b>14%</b>
<b>Sundries, Personal Care</b>	<b>17%</b>	<b>14%</b>
<b>Travel Accessories</b>	<b>17%</b>	<b>14%</b>
<b>Services/Cafe</b>	<b>13%</b>	<b>10%</b>

- 3.06 ANNUAL RENTAL:** The Concessionaire shall be required to pay rent at the prevailing terminal class rates for the lease of support and storage spaces provided by Sub-Articles 1.06 and 1.07, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in Article 3.17, Address for Payments.
- 3.07 CONCESSIONAIRE COMPENSATION:** In consideration for the services provided under this Agreement, the Concessionaire may retain up to a maximum of three percent (3%) above the Sub-tenant percentage fee as stated in Sub-Article 3.05, Retail Category Percentage Fee.

- 3.08 ANNUAL RENTAL RATE ADJUSTMENT:** On October 1st of each year of the Agreement, the rental rates, pursuant to Article 3.06, Annual Rental, shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten Days of same.
- 3.09 COMMON WAREHOUSE LOGISTICS FEE:** In the event the Department initiates a Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or the Concessionaire from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Concessionaire shall not be entitled to charge Sub-tenants for any of the Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Concessionaire as part of the Common Logistics Fee shall not be included in Concessionaire's Gross Revenues for any and all purposes of this Agreement, it being recognized by the Department that any such payments by Sub-tenants to the Concessionaire shall not be included in the calculation of the Percentage Fee, if any, due from Concessionaire to the Department as provided for in **Sub-Article 3.04, Percentage Fee to the County.** The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Concessionaire impose the Common Logistics Fee in a non-discriminatory manner within store categories.
- 3.10 CONCESSION MARKETING FEE:** A concession marketing fee of one half (1/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the first Location opening on the twentieth (20<sup>th</sup>) of each month to be used for marketing the concessions at the Airport.
- 3.11 MAG PERFORMANCE BOND:** Within thirty (30) Days of the award of this Agreement, the Concessionaire shall provide the Department a Performance Bond to guarantee payment of MAG and non Location rent. Concessionaire shall keep such Performance Bond in full force and effect during the Interim Term, Operational Term and any Extension of this Agreement, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current

year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The form of security shall initially be in an amount equal to seventy-five percent (75%) of the MAG and rent. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and non Location rent.

The Department may draw upon such form of security instrument, if the Concessionaire fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Concessionaire shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Concessionaire is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Concessionaire within one hundred eighty (180) Days after the end of the Operational Term or any Extension of the Operational Term.

**3.12 TAXES:** The Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, penalties and charges levied thereon. The Concessionaire hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and penalties payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

**3.13 REPORTS OF GROSS REVENUES:** On or before the tenth (10<sup>th</sup>) calendar day following the end of each month throughout the Interim Term, Operational Term and any Extension of this Agreement, the Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report each Location under this Agreement, together with any percentage fee due to the Department pursuant to Sub-Article 3.04, Percentage Fee to the Department. The Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Concessionaire. The statement must be signed by an officer (if the Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire, and identify all Gross Revenues by Location reported to the Concessionaire during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee penalty of fifty dollars (\$50.00) per Day, as provided in Sub-Article 3.24, Penalties.

- 3.14 OTHER REPORTS:** The Concessionaire shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.
- 3.15 LATE PAYMENT:** In the event the Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.
- 3.16 DISHONORED CHECK OR DRAFT:** In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service fee of TWENTY-FIVE DOLLARS (\$25.00), if the face value of the dishonored check or draft is fifty dollars (\$50.00) or less, THIRTY DOLLARS (\$30.00) if the face value of the dishonored check or draft is more than fifty dollars (\$50.00) and less than three hundred dollars (\$300.00), or FORTY DOLLARS (\$40.00), if the face value of the dishonored check is three hundred dollars (\$300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.
- 3.17 ADDRESS FOR PAYMENTS:** The Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:
- In Person:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300
- During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday
- By Mail:** Miami-Dade Aviation Department  
Finance Division  
P.O. Box 592616  
Miami, Florida 33159
- By Express Mail:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300  
Miami, Florida 33122
- By Wire Transfer:** In accordance with Wire Transfer instructions provided by MDAD's Finance Division, 305-876-7383.

- 3.18 REVENUE CONTROL PROCEDURES:** Notwithstanding anything to the contrary contained herein, the Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Concessionaire with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Concessionaire to implement any such revenue control procedures.
- 3.19 ANNUAL AUDIT:** Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its and each Sub-tenants Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.
- 3.20 RIGHT TO AUDIT/INSPECT:** The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Concessionaire for recording or compiling Gross Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Concessionaire.

If it is established that the percentage fees have been underpaid to the Department, the Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in Sub-Article 3.15, Late Payment, from the date such amount or amounts should have been paid.

Further, if such examination establishes that Concessionaire has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Concessionaire.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Concessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

**3.21 RECORDS AND REPORTS:** The Concessionaire shall, at all times during the Interim Term and Operational Term of this Agreement, or any Extension hereof, hereof and in accordance with applicable law, maintain at the Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Locations, in a form consistent with good accounting practice. In addition, Concessionaire shall install or cause to be installed for use at all times in each Location such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from each Location. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Concessionaire shall account or shall cause its Sub-tenants to account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Concessionaire (and of the Sub-tenants, as the case may be) and which supports the amounts reported to the Department in the Concessionaire's monthly schedules. At a minimum, the Concessionaire's accounting for such receipts shall include the following:

1. Concessionaire's bank account statements (separate bank accounts shall be maintained for receipts from Sub-tenants' payments to the Concessionaire and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Concessionaire's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Gross

Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, including the general ledger and bank statements and all federal, state and local tax returns relating to Sub-tenant's sales, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Locations will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Concessionaire's business.

**3.22 ADDITIONAL FEES DUE:** If the Department has paid any sum or has incurred any obligation or expense for which the Concessionaire agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

**3.23 UTILITIES:** The cost of all utilities used or consumed on the Locations shall be borne by the Concessionaire; provided, however, except with respect to the Concessionaire's support and storage space as defined in Sub-Articles 1.06 and 1.07 at the Airport, the Concessionaire shall be entitled to pass the cost of all utilities used or consumed to the Sub-tenants at the same rates as billed to the Concessionaire without any administrative mark-up or profit. The Department requires the Concessionaire where such capability exist, to provide and install or cause the Sub-tenants to provide and install meters for utilities used at the Concessionaire's or its Sub-tenant's expense. If the Locations are not provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Concessionaire hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

- 3.24 PENALTIES:** If Concessionaire or its Sub-tenants default under any of the covenants or terms and conditions of this Agreement, the Department may elect to impose the financial penalties described below, as a result of the violation(s), on a daily basis, in addition to any other penalties permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

<u>Violation</u>	<u>Fee</u>
Violation of Permitted Use of a Location	\$ 100 per Day/per Location
Failure to Maintain Required Hours of Operation	\$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	\$ 50 per Day/per Location
Unauthorized Advertising	\$ 50 per Day/per Location
Failure to maintain Location clean	\$ 50 per Day/per Location
Failure to maintain Market Basket Pricing or to conduct the surveys as required	\$ 50 per Day/per Location
Installation of Unapproved Items in Locations	\$ 50 per Day/per Location
Violations of other terms and conditions	\$ 75 per Day/per Location

The foregoing is due and payable from the Concessionaire; however, it shall not be construed as prohibiting the Concessionaire from imposing the financial penalties described above, as a result of the Sub-tenant's violation(s), on a daily basis, on the applicable Sub-tenants, in addition to any other penalties permissible by law and/or pursuant to the provisions of the Sub-Lease agreements, until said violations are remedied by the applicable Sub-tenants.

- 3.25 PAYMENT SECURITY:** The Concessionaire shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG and twenty-five percent (25%) of any annual rent, which may be required by Sub-Articles 1.06 and 1.07. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and annual rent. This requirement shall be met no later than thirty (30) Days after the Lease Effective Date of the Agreement. The payment security shall be kept in full force throughout the Interim Term, Operational Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Concessionaire shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

#### ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

- 4.01 IMPROVEMENTS TO LOCATIONS:** The Concessionaire shall be required to invest a minimum of two hundred dollars per square foot (\$200.00 psf), for Approved Improvements for the design, construction, furniture, fixtures and equipment excluding

interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Concessionaire pursuant to Sub-Article 1.09(A), Addition of Location. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of soft costs permitted to be included as Approved Improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Concessionaire to build such improvements in compliance with MDAD TAC procedures.

It is the intent of the parties that Approved Improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the Final Plans, as such term is defined in Sub-Article 4.02, Design of Improvements.

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to Sub-Article 4.09, Cost Documentation, and (iii) can be removed without damage to the premises. The Concessionaire is liable and shall indemnify the Department for any damage to the Locations which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Locations, as stated in Article 4, Improvements to the Locations, or as an extension of this Agreement, and costs incurred by either the Concessionaire or its Sub-tenants to provide such storage space shall not constitute Approved Improvements.

**4.02 DESIGN OF IMPROVEMENTS:** Plans for the design of improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" or Exhibit M "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan" and the "MDAD Design Guidelines Manual" ([www.Miami-Airport.com](http://www.Miami-Airport.com)) as may be established for the Terminal Retail Program. As plans for the improvement of individual Locations or common area improvements are completed, the Concessionaire shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

**4.03 REFURBISHMENT OF LOCATIONS:** The Concessionaire will be required to refurbish the Locations or cause its Sub-tenants to refurbish their respective Locations to begin no earlier than the fifth (5<sup>th</sup>) Operational Term year of the Agreement and be

completed no later than the last day of the fifth (5<sup>th</sup>) Operational Term year of this Agreement.

Approved Improvements for the refurbishment of the Locations shall not be less than fifty dollars per square foot (\$50 psf). There will be no reimbursement or amortization of these costs for refurbishment.

**4.04 CONCESSIONAIRE DEVELOPMENT REQUIREMENTS:** The Concessionaire for Package One (1) and Package Two (2), at no expense to the Department, will have an investment requirement to develop and install retail vitrines in the South Terminal as depicted in Exhibit E "Retail Concession Design Guidelines".

**4.05 CERTAIN CONSTRUCTION CONTRACT TERMS:** All contracts entered into by the Concessionaire and/or its Sub-tenants for the construction of the Improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02, Design of Improvements**, and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the Department in the event the contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Exhibit B, "Surety Performance and Payment Bond" provided by Concessionaire to the Department in the form contained in Exhibit B "Surety Performance and Payment Bond" in the Lease and Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation contract.

**4.06 IMPROVEMENTS FREE AND CLEAR:** The improvements, upon completion, shall immediately become the property of the Department, free and clear of any liens or encumbrances whatsoever, other than the Department's obligation to reimburse the Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the Department (and the Concessionaire for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the locations or improvements.

**4.07 OTHER REQUIREMENTS:** The Concessionaire shall or shall cause the Sub-tenants to apply for and obtain a building permit from the Department for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Concessionaire shall furnish or shall cause the Sub-tenants to furnish to the Concessionaire and the Department one complete

set each of legible prints (black line), photo mylars and 35 mm aperture card microfilm of construction drawings, and auto cad files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

Any change in the Location, concept or tenant proposed in response to the Request for Proposals must be approved in writing by the Department. The Sub-tenant occupying the Location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing with a copy to the Department and an opportunity to respond in writing to the Department and have an opportunity to be heard by the Department.

**4.08 REVIEW OF CONSTRUCTION:** The Department shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Concessionaire or the Sub-tenant and approved by the Department.

**4.09 COST DOCUMENTATION:** Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in Sub-Articles 4.01, Improvements to Locations, 4.03, Refurbishment of Locations, and 4.04, Concessionaire Development Requirements. the Concessionaire shall submit to the Department a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the Department (the "Certified Audit"). The Concessionaire or the Sub-tenants, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Concessionaire or the Sub-tenants and approved by the Department, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Concessionaire or the Sub-tenants, as the case may be. No non-receipted expenditures will be credited. Concessionaires not submitting certified audits within the allotted time may be billed a penalty of fifty (\$50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of ten per cent (10%) of the monies due the Department on the build-out of the Locations. In the event of any disputes between the Department and the Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in Sub-Article 17.01, Incorporation of Trust Agreement by Reference. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Concessionaire in writing that it has approved or disapproved the certified costs for each Location and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Concessionaire fails to submit the Certified Audit within the time prescribed above for any Location, then a penalty will be assessed as noted in Sub-Article 3.24, Penalties. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Concessionaire for un-amortized improvement costs for such Location pursuant to Sub-Article 4.10, Amortization Schedule, shall equal the lesser of two hundred (\$200) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Concessionaire or its Sub-tenant's minimum investment and is depicted as such in the results of the Certified Audit, the Concessionaire shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Location.

If the approved total receipted amount for Refurbishment of Locations is below the Concessionaire's or its Sub-tenant's investment, the Concessionaire shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

The Concessionaire shall be entitled to obtain reimbursement of such payments made to the Department from the applicable Sub-tenant(s) who fails to spend the minimum investment or the refurbishment amount for their specific Locations.

**4.10 AMORTIZATION SCHEDULE:** The Concessionaire shall amortize its capital investment for a period not to exceed (60) months using the straight-line depreciation method. If, at any time during the Operational Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Locations at its sole discretion and reimburse the Concessionaire the unamortized balance of Approved Improvements for the deleted or modified location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.
2. Stores displays more than \$500 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Concessionaire will be required to confirm the minimum investment within one hundred twenty (120) Days of Beneficial Occupancy for each Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the \$200/psf minimum investment, the Concessionaire will be required to pay the Department the difference between the minimum investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

Concessionaires not submitting a certified audit within the allotted time may be billed a penalty of fifty dollars (\$50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five percent (25%) of the monies due the Department on the build-out of the Locations.

Prior to the commencement of any construction installation or work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Performance and Payment Bond provided by Concessionaire to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Agreement. The Performance and Payment Bond shall be in full force throughout the term of the installation / construction contract.

**4.11 CONSTRUCTION PERMIT FEE:** The Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Concessionaire to the Department is an amount equal to one per cent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Concessionaire's and Sub-tenant's plans/specifications. Such fee shall be non-refundable. The Concessionaire shall be entitled to require the Sub-tenants to pay their proportionate share for the construction costs for the improvements to be made by the Sub-tenants in each Location.

**4.12 CONSTRUCTION SERVICES:** The Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

**1) Concessionaire Improvements**

Pursuant to the terms of this Agreement, the Concessionaire shall construct or cause to be constructed certain improvements. The Department shall provide the Concessionaire with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Concessionaire and the Department, the Concessionaire shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Concessionaire shall proceed to design and construct the improvements in accordance with the provisions of this Agreement.

**2) Design and Construction Coordination**

a. Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized administrative support space including those of Sub-tenants.
2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide Sub-tenants, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Concessionaire development requirement, whereby such elements are the designated responsibility of the Concessionaire, if so implemented.

**3) Construction**

Concessionaire shall:

1. Attend or cause Sub-tenants to attend pre-construction meetings, construction meetings, coordinate construction with Sub-tenants if applicable, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to and or cause Sub-tenants to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations, including those of any Sub-tenants.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.

6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Locations.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Obtain Certificate of Occupancy for each Location.
14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

## ARTICLE 5 – STANDARDS OF OPERATION

**5.01 STANDARDS OF OPERATION:** The Concessionaire shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" available on [www.miami-airport.com](http://www.miami-airport.com), and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Concessionaire agrees to observe and obey and cause its Sub-tenants to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Concessionaire. The Concessionaire shall distribute such rules and regulations and operating performance standards to its Sub-tenants. The Department shall provide the Concessionaire with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Concessionaire shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Concessionaire shall immediately implement and comply and shall cause its Sub-tenants to immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

The Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

- 5.02 MARKET BASKET PRICING POLICY:** The Department has instituted a Market Basket pricing policy to ensure that Airport prices are comparable to retail in the Miami Dade County, Florida area to reinforce the objective of making the Airport a more "passenger friendly" airport, pursuant to Exhibit L "Standards of Operation."

The Concessionaire or its Sub-tenants who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to Sub-Article 18.09 to bring all products into compliance. Failure to do so shall subject the Concessionaire to penalties pursuant to Sub-Article 3.24, Penalties, and shall constitute a default under this Agreement.

## ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

### 6.01 DEPARTMENT SERVICES:

- A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Concessionaire or its Sub-tenants, and further provided that the Concessionaire shall or shall cause its Sub-tenants to reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Concessionaire

shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

- B. The Concessionaire must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Concessionaire's or Sub-tenant's Locations are of such a condition as to significantly impact the Concessionaire's or a Sub-tenant's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Concessionaire pursuant to this Agreement or the Sub-tenant pursuant to the Sub-Lease or license agreement, the Department may provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by Sub-Article 6.01, Department Services.

- C. No Other Obligation of Department: The Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Concessionaire's or its Sub-tenant's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Concessionaire or its Sub-tenants.

1. The Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Sub-tenants to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf and the Department

shall not be responsible for any inaccuracies in such statistics or their interpretation.

3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.
4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

#### **ARTICLE 7—FURNITURE, FIXTURES AND EQUIPMENT**

**7.01 FURNITURE, FIXTURES, AND EQUIPMENT:** Any equipment, furnishings, fixtures and signs installed in the Locations by the Concessionaire or its Sub-tenant shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Concessionaire or its Sub-tenant, as provided in Sub-Article 4.01, Improvements to Locations, shall, except as provided in Sub-Article 7.03(B), Disposal of Furniture, Fixtures, and Equipment, be removed from the Locations within five (5) Days following the expiration or earlier termination of this Agreement.

**7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS:** The Concessionaire will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Concessionaire will be the same. However, the Department reserves the right to require the Concessionaire to modify its or its Sub-tenant's operations or its physical locations to comply with the Department's ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.

**7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT:** At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to Article 12, Default and Termination by County, or Article 13, Claims and Termination by Concessionaire, hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Locations by the Concessionaire or any Sub-tenant:

- (A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) Days following the expiration or earlier

termination of this Agreement, subject to the provisions of Sub-Article 4.01, Improvements to Locations; or

- (B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Concessionaire or any Sub-tenant (personal property as referred to in Sub-Article 4.01, Improvements to Locations;) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Concessionaire or any Sub-tenant).

## ARTICLE 8 – MAINTENANCE

- 8.01 CLEANING:** The Concessionaire shall, at its cost and expense, keep or cause its Sub-tenants to keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean as provided in the Exhibit L, “Standards of Operation”, the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in penalties being assessed pursuant to Sub-Article 3.24, Penalties.

- 8.02 REMOVAL OF TRASH:** The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Locations, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. The Concessionaire shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Concessionaire and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in penalties being assessed pursuant to Sub-Article 3.24, Penalties.

The Department reserves the right to charge the Concessionaire retroactively non-discriminatory proportionate share for waste disposal which may be imposed either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department’s actual costs.

- 8.03 MAINTENANCE AND REPAIR:** Except with respect to the Department’s maintenance and repair obligations as set forth in Sub-Article 6.01, Department Services, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition.

Maintenance for all equipment furnished by the Concessionaire or its Sub-tenants specifically as a result of their operation shall remain the obligation of the Concessionaire or its Sub-tenants. The Concessionaire shall repair or cause to be repaired, at or before the end of the Operational Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of either the Concessionaire and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire (or if the Concessionaire fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Concessionaire for such services, as provided by Sub-Article 8.04.

- 8.04 FAILURE TO MAINTAIN:** Upon failure of the Concessionaire or its Sub-tenants to maintain the Locations as provided in this Article 8, Maintenance, the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Concessionaire, in addition to any penalties imposed by the Department pursuant to Sub-Article 3.24, Penalties.

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in Sub-Article 12.02, Payment Default.

- 8.05 ENVIRONMENTAL RECYCLING:** The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire and/or its Sub-tenants shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Concessionaire or its Sub-tenants is the sole responsibility of the Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

- 8.06 FIRE PROTECTION AND SAFETY EQUIPMENT:** The Concessionaire and its Subtenants must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Interim Term, Operational Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Locations.

## **ARTICLE 9 – ASSIGNMENT AND OWNERSHIP**

- 9.01 NO ASSIGNMENT:** The Concessionaire shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Concessionaire allow others to use the Locations, without the prior written consent of the Department.
- 9.02 OWNERSHIP OF THE CONCESSIONAIRE:** Since the ownership, control, and experience of the Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control of the Concessionaire without the prior written consent of the Department.
- 9.03 CHANGE OF CONTROL:** If Concessionaire is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Concessionaire to result in a change of control of Concessionaire shall be deemed an assignment of this Agreement for purposes of this Article 9, Assignment and Ownership. If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire, shall be deemed an assignment of this Agreement for purposes of this Article 9, Assignment and Ownership.
- 9.04 HOLDOVER:**

**A. With the Department's Permission:**

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations of no less than seventy per cent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement.

**B. Without Department Permission:**

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the

provisions of this Agreement. The Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS Percentage Fee PLUS monthly installment of the support space annual lease rental pursuant to Sub-Article 3.06, Annual Rental, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

#### ARTICLE 10 – INDEMNIFICATION

**10.01 INDEMNIFICATION REQUIRED OF CONCESSIONAIRE:** The Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Concessionaire shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

The Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

#### ARTICLE 11 – INSURANCE

**11.01 INSURANCE REQUIRED OF CONCESSIONAIRE:** Prior to execution of this Agreement by the County and commencement of the Interim Term of this Agreement, the Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 592075, Miami, Florida 33159-2075 for approval. All insurance shall be maintained throughout the Interim Term, Operational Term and any Extension of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Concessionaire's operations. Additional types of insurance coverage or increased limits

may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Concessionaire and its Sub-tenants must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

- A. Workers' Compensation as required by Chapter 440, Florida Statutes.
- B. Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Concessionaire in the performances of this Agreement.

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\*Under no circumstances is the Concessionaire or its Sub-tenants allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Risk Management Office.

**11.02 CERTIFICATE CONTINUITY:** The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with Article 11, Insurance, remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates for its and its Sub-tenants' operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

**11.03 INSURANCE COMPANY RATING REQUIREMENTS:** All insurance policies required above from the Concessionaire and its Sub-tenants shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

- 11.04 CONCESSIONAIRE LIABLE:** Compliance with the requirements as to carrying insurance in Article 11, Insurance, shall not relieve the Concessionaire and its Sub-tenants from liability under any other provision of this Agreement.
- 11.05 CANCELLATION OF INSURANCE OR BONDS:** Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.
- 11.06 RIGHT TO EXAMINE:** The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Concessionaire and its Sub-tenants (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit or cause its Sub-tenants to permit such inspection at the offices of the Concessionaire and/or its Sub-tenants, as may be applicable. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire and/or its Sub-tenant agree to provide copies to the Department, at the Concessionaire's or Sub-tenant's sole cost and expense.
- 11.07 PERSONAL PROPERTY:** Any personal property of the Concessionaire or its Sub-tenants, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.
- 11.08 SURVIVAL OF PROVISIONS:** The provisions of Article 11, Insurance, shall survive the expiration or earlier termination of this Agreement.
- 11.09 INSURANCE REQUIRED OF SUB-TENANTS:** The limits for each type of insurance may be revised upon review and approval of the Sub-tenant's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

The Concessionaire shall cause its Sub-tenant to provide certificates of insurance indicating the following types of insurance coverage prior to any occupation of the premises:

- A. Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County must be shown as an additional insured with respect to this coverage.

The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the contractor(s) in the performances of the construction contract.

- B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\*Under no circumstances is the Concessionaire or a Sub-tenant allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Safety and Insurance Office.

- C. **Certificate Continuity:** The Concessionaire and its Sub-tenants shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the lease, including any and all option years, if applicable. If insurance certificates are scheduled to expire during the contract period, the Sub-tenant shall be responsible for submitting new or renewed insurance certificates to the Concessionaire at a minimum of thirty (30) Days before such expiration.

- D. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the MDAD's Safety and Insurance Office.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

- E. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit or cause such inspection to be permitted at the offices of the Department.

#### 11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

- A. **Indemnification, Bonds and Insurance Required from Construction Contractor:** The following language, including the indemnification clause, shall be included in all construction contracts between the Concessionaire and its general contractor(s) and subcontractors and shall also be included in all construction contracts between the Sub-tenants and their respective general contractors and subcontractors:

**Indemnification:** The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Lessee of the locations, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death),

property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnatee arising from the contract or its performance shall be limited to the greater of \$1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnatee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnatee may have in law, equity, or otherwise.

- B. Surety Performance and Payment Bonds: Pursuant to and in accordance with Section 255.05, Florida Statutes, the Concessionaire or each contractor performing any part of the work for the Concessionaire or its Sub-tenants shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Surety Performance and Payment Bond". Within ten (10) Days of issuance, Concessionaire shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the Concessionaire shall deliver to County the Bonds required to be provided by Concessionaire or each contractor as set forth in this Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
\$ 500,001 to \$1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over \$10,000,000	A IX

For contracts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

- a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.
- b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
- c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.
- d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.
- e) For contracts in excess of \$500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- g) The attorney-in-fact or other officer who signs a Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

The Bond shall be delivered to the Department upon execution of the contract between the Concessionaire and its contractor or the Sub-tenant and its contractor, as the case may be.

- C. **Insurance Required of Construction Contractor(s):** The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Concessionaire shall cause its contractor(s) and the Sub-tenants' respective contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance

with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

- (a) Workers' Compensation as required by Chapter 440, Florida Statutes.
- (b) Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Concessionaire must be shown as an additional insured with respect to this coverage.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\* Under no circumstances is the contractor allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Safety and Insurance Office.

- (D) **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Concessionaire and approved by the Concessionaire and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Concessionaire at a minimum of thirty (30) Days before such expiration.

- (E) **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Concessionaire.

- (F) **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Concessionaire to agree to permit such inspection at the offices of the Department.

- (G) **Personal Property:** Any personal property of the contractor, or of others, placed in the Locations shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

## ARTICLE 12- DEFAULT AND TERMINATION BY COUNTY

**12.01 EVENTS OF DEFAULT:** A default shall mean a breach of this Agreement by the Concessionaire (an "Event of Default"). In addition to those defaults defined in Sub-Article 12.02, Payment Default, Sub-Article 12.03, Other Defaults, and Sub-Article 12.04, Habitual Default, an Event of Default, may also include one (1) or more of the following occurrences:

- (A) The Concessionaire or its Sub-tenant has violated the terms and conditions of this Agreement;
- (B) The Concessionaire or its Sub-tenant has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;
- (C) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;
- (D) The occurrence of any act, which operates to deprive Concessionaire of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
- (E) Abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;
- (F) Any persistent violation on the part of Concessionaire, its agents or employees of the traffic rules and regulations of City at Airport or disregard of the safety of persons using the Airports, upon failure by Concessionaire to correct the same;
- (G) Failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;
- (H) Failure by Concessionaire or its Sub-tenants to maintain its other equipment in a manner satisfactory to the Director;
- (I) The Concessionaire or its Sub-tenants has failed to obtain the approval of the Department where required by this Agreement;
- (J) The Concessionaire or its Sub-tenants has failed to provide adequate assurances as required under Sub-Article 12.09, Adequate Assurances;
- (K) The Concessionaire has failed to comply with any provision of Sub-Article 14.07, Airport Concession Disadvantaged Business Enterprise Participation Plan;
- (L) The Concessionaire has failed in a representation or warranty stated herein; or

(M) The Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

**12.02 PAYMENT DEFAULT:** Failure of the Concessionaire to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Concessionaire.

**12.03 OTHER DEFAULTS:** The Department shall have the right, upon thirty (30) Days written notice to the Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period shall be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

- (A) Failure of the Concessionaire to comply with covenants of this Agreement other than those that constitute default pursuant to Sub-Article 12.02, Payment Default.
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.
- (C) Any Event of Default.

**12.04 HABITUAL DEFAULT:** Notwithstanding the foregoing, in the event that the Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided for in Sub-Article 12.02, Payment Default, and Sub-Article 12.03, Other Defaults, above, the Concessionaire may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with Sub-Article 12.10, Actions at Termination, hereof.

- 12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE:** If an Event of Default occurs, the Department shall notify the Concessionaire by sending a written notice of default, specifying the basis for such Event of Default, and advising the Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Concessionaire can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Concessionaire has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Concessionaire shall discontinue the services.
- 12.06 UNAMORTIZED INVESTMENT EXTINGUISHED:** Termination of this Agreement based upon Sub-Article 12.07, Termination for Abandonment, Sub-Article 12.02, Payment Default, Sub-Article 12.03, Other Defaults, Sub-Article 12.04, Habitual Default, or Sub-Article 12.08, Termination for Cause, shall extinguish any unamortized investment amounts owed the Concessionaire by the Department, for the slippage in Location Turnover Dates.
- 12.07 TERMINATION FOR ABANDONMENT:** This Agreement may be terminated in its entirety upon the abandonment by the Concessionaire of the Locations or the voluntary discontinuance of Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Concessionaire from providing services on the Locations for the purposes authorized in Article 2, Use of Locations. The foregoing shall not include periodic Sub-tenant vacancies in individual Locations that may occur from time to time during the Interim Term and Operational Term of this Agreement including any Extension term.
- 12.08 TERMINATION FOR CAUSE:** The County may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Concessionaire is convicted of a felony during the Interim Term, Operational Term or any Extensions thereof if applicable. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Concessionaire may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

**12.09 ADEQUATE ASSURANCES:** When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

**12.10 ACTIONS AT TERMINATION:** The Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

- (A) Stop all work as specified in the notice to terminate;
- (B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property; and
- (C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the date of termination.

### **ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE**

**13.01 ADMINISTRATIVE CLAIM PROCEDURES:** If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire at the address furnished in Sub-Article 18.09, Notices. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with Sub-Article 12.03, Other Defaults. The

failure of the Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

**13.02 TERMINATION:** The Concessionaire shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Concessionaire of the existence of such breach.
- (C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Concessionaire's provision of services for a period of one hundred eighty (180) Days.

#### **ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

**14.01 ACDBE REQUIREMENTS:** The Department has established a ACDBE goal for Package One (1) of 30%, and a ACDBE goal for Package Two (2) of thirty per cent (30%) participation for certified ACDBE's in connection with this Agreement.

The Concessionaire will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, on or before the tenth (10<sup>th</sup>) day of every month.

**14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:** When a ACDBE participates in a contract; only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.

When a ACDBE performs as a participant in a joint venture, a portion of the total dollar value of the contract during the complete contract term, equal to the distinct clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in Appendix C "Disadvantage Business Enterprise Participation Plan/Provision".

Expenditures to a ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:

- A. ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the specific identified work.
- B. The Department will determine whether a ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- C. A ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.
- D. If a ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.
- E. When a ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this Article, the ACDBE may present evidence to rebut this presumption. The Department will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The Department's decision on commercially useful function matters is final.

**14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:** Concessionaires may satisfy a part of the ACDBE goal by Joint Venturing with a ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23, Subpart F. A "joint venture" or ("JV") shall mean and may be referred to as an "association" of two or more businesses acting as a concessionaire and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The joint venture agreement must specify the following:

- A. Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.
- B. The work should be submitted as part of this Agreement and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be Store-specific with regards to tasks and Locations. The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten (10) hours per week.

Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the Monthly Report of ACDBE Joint Venture Activity (Appendix C, page 12), providing details of how the performance objectives were achieved and providing documentation of the achievement on the ACDBE form on page 12 of Appendix C. This information should include, but not be limited to:

Details of training sessions, including class rosters and lesson plans.

1. Deliverables and work products.
  2. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
  3. Proof that employees of partners actually work for them (payroll, payroll tax returns, and the like).
- C. Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.
- D. Each ACDBE JV partner must perform work that is commensurate with the Agreement.

As described below, each ACDBE must submit, as part of its ACDBE Plan, a plan for the achievement of the ACDBE goal, including Schedule of Participation and the Letter of Intent from certified ACDBE's, or who have applied for certification through the Miami-Dade County Department of Business Development, as required by the Airport Concession Disadvantaged Business Enterprise Participation Plan.

Without limiting the requirements of the Agreement, the Department will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

**14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE):** ACDBE firms must maintain their certification throughout the term of this Agreement.

**14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:** The Concessionaire acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Subpart F, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Concessionaire under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not be limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Concessionaire has defaulted in the requirement to comply with the provisions of this Article and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to the default language referenced in the Agreement.

The Agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23, Subpart F. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any lease and concession agreement covered by 49 CFR Part 23, Subpart F.

The Concessionaire agrees to include the above statements in any subsequent lease and concession agreements.

**14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:** Consistent with the goal of providing ACDBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to Sub-Article 14.07. Airport Concession Disadvantaged Business Enterprises Plan, hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to, the following specific duties and responsibilities:

1. Store Operations
  - a. Passenger profile analysis
  - b. Cash handling/sales audit
  - c. Enhancing sales
  - d. Selling to the customer
  - e. Staffing to meet customer levels
  - f. Opening and closing procedures
2. Personnel
  - a. Employment practices
  - b. Compliance with wage and hour laws
  - c. Compliance with County and Airport requirements
  - d. Designing compensation and benefits plans
  - e. Management and staff training to enhance product knowledge and customer service
  - f. Warehousing, packaging and sales reporting of merchandise

3. Design and Display
  - a. Retail layout
  - b. Merchandising techniques
  - c. Visual display techniques
4. Loss Prevention
  - a. External and internal theft
  - b. Shop security
5. Books, Records and Reports
  - a. The books of account and supporting records of the Concessionaire and the Sub-tenant(s) shall be maintained at the principal office and shall be open for inspection by the Department or the ACDBE Sub-tenant(s) or joint venture(s), upon reasonable prior written notice, during business hours.
  - b. The Concessionaire books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire shall provide to the Sub-tenant(s) or joint venture(s), within an agreed upon time after the end of each month during the term of the Agreement, an un-audited operating (i.e., income) statement for the preceding month and for the year to date.
  - c. Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered; total number of hours of training; training material covered; etc.).

**14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:** The Concessionaire shall contract with those firm(s) as are listed on the Concessionaire's ACDBE Participation Plan and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firms(s), (ii) reduce the scope of the work to be performed, (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The Department shall monitor the compliance of the Concessionaire with the requirements of this provision as referenced in Sub-Article 14.01, ACDBE Requirements, during the Interim Term, Operational Term and/or Extension, if applicable. The Department shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, Sub-tenant Gross Revenues, records, records of expenditures, Sub-tenant Agreements between the Concessionaire and ACDBEs, and other records pertaining to the ACDBE Participation Plan.

If at any time the Department has reason to believe that the Concessionaire is in violation of this provision, the Department may, in addition to pursuing any other available legal

remedy, impose sanctions which may include, but are not limited to, the termination of this Agreement in whole or in part, unless the Concessionaire demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the Department upon the Concessionaire except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Aviation Director.

## **ARTICLE 15- RULES, REGULATIONS AND PERMITS**

- 15.01 RULES AND REGULATIONS:** The Concessionaire shall comply and cause its Sub-tenants to comply, with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder by the Department, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.
- 15.02 VIOLATIONS OF RULES AND REGULATIONS:** The Concessionaire agrees to pay, on behalf of the County, any penalty, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Concessionaire, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in Sub-Article 15.01, Rules and Regulations, or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of Sub-Article 15.02, Violations of Rules and Regulations, and Sub-Article 15.01, Rules and Regulations, shall be included in every Sub-Lease and other agreements which the Concessionaire may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.
- 15.03 PERMITS AND LICENSES:** The Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services. The Concessionaire shall cause its Sub-tenants to do the same.

## **ARTICLE 16 – GOVERNING LAW**

- 16.01 GOVERNING LAW; VENUE:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

**16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION.** In the event that the County or the Concessionaire commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Concessionaire agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Concessionaire agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in Sub-Article 18.09, Notices, of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Concessionaire has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Concessionaire, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statutes.

## **ARTICLE 17 – TRUST AGREEMENT**

**17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE:** Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15<sup>th</sup> day of December, 2002, as amended from time to time, by and between the County and JPMorgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the “Trust Agreement”), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Concessionaire at the offices of the Department during normal working hours.

**17.02 ADJUSTMENT OF TERMS AND CONDITIONS:** If at any time during the Interim Term, Operational Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Concessionaire.

**17.03 INSPECTIONS:** The authorized employees and representatives of the County and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations and any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the County should it not make such inspection(s).

**17.04 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW:** According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under \$1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. *Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.*

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

## ARTICLE 18 – OTHER PROVISIONS

**18.01 PAYMENT OF TAXES:** The Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations, any storage/support spaces and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to Sub-Article 12.03, Other Defaults, hereof.

**18.02 ALTERATIONS BY CONCESSIONAIRE:** The Concessionaire shall not alter or modify the Locations or any storage/support spaces, except in accordance with Article 4, Improvements to the Locations, herein, without first obtaining written approval from the Department.

- 18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 18.04 ADMINISTRATIVE MODIFICATIONS:** It is understood and agreed to that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of Sub-Article 1.09, Addition, Deletion and Modification of Locations, Sub-Article 18.02, Alterations by Concessionaire, Sub-Article, 21.02, Right to Amend, and Sub-Article 21.04, Right to Modify.
- 18.05 SECURITY:** The Concessionaire acknowledges and accepts full responsibility for the security and protection of the Locations. The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for protection of the Locations shall be the sole responsibility of the Concessionaire and shall involve no cost to the Department.
- 18.06 RIGHTS OF DEPARTMENT AT AIRPORT:** The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Concessionaire for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County its employees, or agents.
- 18.07 OTHER DEPARTMENT RIGHTS:** The Concessionaire shall be liable for any physical damage caused to the Locations by the Concessionaire, its employees, agents, contractors, subcontractors, suppliers, or it's Sub-tenants. The liability shall encompass: (i) the Concessionaire's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Concessionaire or its Sub-tenants and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.
- 18.08 FEDERAL SUBORDINATION:** This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.
- 18.09 NOTICES:** Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail,

Return Receipt Requested, to:

To the County:  
(Mailing Address)

Director  
Miami-Dade Aviation Department  
Post Office Box 592075  
Miami, Florida 33159-2075

or (physical address):

Miami International Airport  
Terminal Building  
Director's Office  
Concourse E-5<sup>th</sup> floor  
Miami, FL 33122

To the Concessionaire:

(Address Here)

with copies to:

(Address Here)

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

- 18.10 SEVERABILITY:** If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.
- 18.11 RIGHTS RESERVED TO DEPARTMENT:** All rights not specifically granted the Concessionaire by this Agreement are reserved to the Department.
- 18.12 COUNTY LIEN:** The County shall have a lien upon all personal property of the Concessionaire in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.
- 18.13 AUTHORIZED USES ONLY:** The Concessionaire shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance

policies of the Department or any policies of insurance written on behalf of the Concessionaire under this Agreement.

**18.14 NO WAIVER:** There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Concessionaire.

**18.15 AIRPORT SECURITY PROGRAM.** Concessionaire agrees to observe all federal, state and local laws, rules and security requirements applicable to Concessionaire's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County or the Department, and to take such steps as may be necessary or directed by County or the Department to insure that employees, Sub-tenants, invitees and guests observe these requirements. If required by the Department, Concessionaire shall conduct background checks of its employees in accordance with applicable federal, state or local laws. The Department shall have the right to require the removal or replacement of any employee of Concessionaire or its Sub-tenant(s) at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

**18.16 INTENT OF AGREEMENT:** This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

**18.17 MODIFICATIONS:** This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to Sub-Article 18.04, Administrative Modifications, Sub-Article 21.02, Right to Amend, and Sub-Article 21.04, Right to Modify. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

- 18.18 RADON DISCLOSURE:** In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **“Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.”**
- 18.19 TRADEMARKS AND LICENSES:** The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.
- 18.20 HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 18.21 BINDING EFFECT:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.
- 18.22 GOVERNMENTAL DEPARTMENT:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.
- 18.23 INDEPENDENT CONTRACTOR:** The Concessionaire shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Concessionaire in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Concessionaire under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Concessionaire represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

**18.24 OTHER LIENS:** Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Concessionaire or its Sub-tenants shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Concessionaire or its Sub-tenants may in good faith contest any such lien if Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Concessionaire or its Sub-tenants or as a consequence of the existence of Concessionaire's interest under this Lease.

#### ARTICLE 19 - SUB-LEASES

**19.01 ASSIGNMENT OF SUB-LEASES BY DEPARTMENT:** In the event this Agreement is terminated prior to the completion of the Operational Term or Extension, the Department shall have the following rights and obligations regarding the Sub-tenant Agreements then in effect:

- (A) in case of termination without cause by the County or if the Concessionaire terminates with cause, the County shall execute an agreement assigning to the County the Concessionaire's right and duties under all Sub-Lease agreements then in effect (Assignment Agreement); and
- (B) in cases of termination with cause by the County or if the Concessionaire terminates without cause, refer to Sub-Article 12.07, Termination for Abandonment, the County reserves the right to not execute an Assignment Agreement to assume those Sub-tenant agreements that fail to satisfy any of the following criteria:
  - (a) Sub-tenant is not currently in non-monetary default, beyond all applicable notice and cure periods;
  - (b) Sub-tenant has no outstanding uncured material defaults and no material defaults, cured or otherwise, within one (1) year before the proposed date of assignment;
  - (c) Sub-tenant has not had no more than three (3) accumulated defaults of any kind during the previous twelve (12) months under its Sub-Lease agreement;
  - (d) Sub-tenant is current regarding all payments of any kind for which it is responsible under its Sub-Lease agreement; and
  - (e) Sub-tenant has no outstanding claims of default against the Concessionaire in its capacity as landlord under the Sub-Lease agreement or has waived any such claims.

In addition to the foregoing, the County has no obligation to assume any Sub-tenant agreement (i) which does not conform to the requirements of this Agreement unless each non-conforming provision was explained to the Department and specifically approved prior to execution of the Sub-Lease or even if not approved, the non-conforming provisions are not adverse to the Department's interests, as determined in the judgment of the Department, or (ii) the Concessionaire does not execute an Assignment Agreement which provides that the Concessionaire remains liable for and indemnifies and holds harmless the County for any claims arising out of the performance of the Sub-Lease agreement up to the effective date of the Assignment Agreement.

**19.02 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES:** Concessionaire shall not sub-lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Concessionaire hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

**19.03 CONCESSIONAIRE'S SUB-LEASE AGREEMENT REQUIREMENTS:** The Concessionaire's Sub-Lease agreement(s) must not extend beyond the Operational Term or, any Extension and must contain comparable terms and conditions, as may be applicable, to those contained herein.

Costs not directly related to a Location of a Sub-tenant shall not be imposed upon that sub-tenant except for such costs required by the Department such as the marketing fee and/or common logistics fee.

**19.04 SUB-TENANT MINIMUM QUALIFICATIONS REQUIREMENT:** The Concessionaire must ensure that each Sub-tenant has a minimum of three (3) years continuous experience within the last five (5) years in managing or operating and maintaining one or more retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of \$250,000 in gross sales per year per location.

## ARTICLE 20 - WAIVER OF CLAIMS

The Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Concessionaire or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Concessionaire's or its Sub-tenants' ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto,

including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

## **ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS**

**21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY:** This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

**21.02 RIGHT TO AMEND:** In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Concessionaire hereby consents to any and all such modifications and changes as may be reasonably required.

### **21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:**

#### **A. Covenants Against Discrimination:**

1. Concessionaire on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights

or obligations under this Agreement, Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Concessionaire will provide and cause its Sub-tenants to provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.
4. Concessionaire assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.
5. Concessionaire further assures County that it and its Sub-tenants will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Concessionaire also assures County that it will require its contractors and Sub-tenants to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Concessionaire's services hereunder.

6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.
  - b) Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Concessionaire agrees that it will adopt such requirements as part of this Agreement.

**21.04 RIGHT TO MODIFY:** The parties hereto covenant and agree that, during the Interim Term, Operational Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Concessionaire from contesting said rulings or opinions, but the Concessionaire shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

**21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS:** The Concessionaire agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Concessionaire and delivery to the Department of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

**21.06 REMEDIES:** All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

**21.07 NOT USED.**

**21.08 REGULATIONS OF DEPARTMENT:** The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire and the Concessionaire's Sub-tenants of the Locations shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

**21.09 INTEREST:** Any sums payable to the Department by the Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

**21.10 MISCELLANEOUS PROVISIONS:** The Concessionaire, its Sub-tenants and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Concessionaire or to its services or operations hereunder.

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Interim Term, Operational Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.
2. The Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Concessionaire or any of its Sub-tenants, officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
3. The Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Concessionaire.

4. The County shall have the right during the Concessionaire's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.
5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
6. Time is expressed to be the essence of this Agreement.
7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.
8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained herein.
9. Except as otherwise provided herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.
10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

**21.11 FORCE MAJEURE:** Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Concessionaire, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

**21.12 ENTIRE AGREEMENT:** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein;

provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by Sub-Article 18.04, Administrative Modifications, or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

**CONCESSIONAIRE**

**ATTEST:**

Secretary \_\_\_\_\_  
(Signature and Seal)

\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
(Legal Name of Corporation)

By: \_\_\_\_\_  
Concessionaire - Signature

Name: \_\_\_\_\_

\_\_\_\_\_  
(Type Name & Title)

**INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE**

\_\_\_\_\_  
Legal Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
Legal Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
(Type Name & Title)

Attest: \_\_\_\_\_

Name of Managing Joint Venturer:

\_\_\_\_\_

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Authorized Representative of  
the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

**BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

By: \_\_\_\_\_  
County Manager

Approved for Form  
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

\_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk

Resolution No.: \_\_\_\_\_

Date: \_\_\_\_\_

**FORM OF LEASE AND CONCESSION**

**AGREEMENT**

**BY AND BETWEEN**

**MIAMI-DADE COUNTY, FLORIDA**

**AND**

---

**DEVELOPER**

**FOR RETAIL CONCESSION PROGRAM**

**AT**

**MIAMI INTERNATIONAL AIRPORT**

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## DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The terms "**Agreement**" shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Developer.

The term "**Airport**" shall mean Miami International Airport.

The term "**Approved Improvements**" are the improvements to a Location, which have been approved by the Department which may include the design, equipment, fixtures, flooring, and signage.

The term "**Base Building Work**" shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Locations in Shell Condition.

The term "**Beneficial Occupancy**" shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received for each Location.

The term "**Board**" shall mean Board of County Commissioners of Miami-Dade County.

The term "**Capital Improvement Program**" or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The term "**Code**" shall mean the Code of Miami-Dade County, Florida.

The term "**Common Logistics Fee**" shall mean an amount to be invoiced as a separate line item and collected from Sub-tenants by the Developer for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Developer may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program. The Developer will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term "**Common Logistics Program**" shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term "**Concessionaire**" shall mean the person, firm, or entity that enters into this Lease and Concession Agreement.

The term "**Consumer Price Index**" or "**CPI**" shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

The term "**County**" shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term "**Days**" shall mean calendar days, unless specifically stated as other.

The term "**Department**" or "**MDAD**" shall mean the Miami-Dade Aviation Department.

The term "**Developer**" shall mean the Concessionaire that will not operate Locations but will Sub-Lease all Locations.

The term "**Director**" shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term "**Disadvantaged Business Enterprises**" or "**DBE**" shall have the meaning ascribed in Article 14 entitled "Disadvantaged Business Enterprises".

The term "**Extension**" shall mean the addition of one (1) separate two (2) year term following the Operational Term in writing by the County.

The term "**Gross Revenues**", as used in this Agreement, shall mean all Sub-tenant minimum annual guaranteed rents and percentage fees, if any, paid or payable by the Developer from the Sub-tenants and any consideration of determinable value paid or payable to the Developer by any third party (for example, retail display allowances and other promotional incentives). However, the term Gross Revenues shall not include: (i) any and all pass-through charges such as Sub-tenant payments to the Developer for any sums collected for federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services, utilities, the Common Logistics Fee and contribution to the Marketing Program; (ii) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable or (iii) promotional discount and coupon offers issued to customers as a result of a Department approved marketing plan. In connection with such Developer's Gross revenues, Developer hereby agrees to apply any security deposits received from its Sub-tenants to the payment of Sub-tenant minimum annual guaranteed rents and percentage fees, if any, due to non-payment by a Sub-tenant from time to time following applicable notice and cure periods provided in the Sub-Lease agreement.

The term "**Gross Receipts**" shall mean Gross Revenues received by Developer as a result of operations pursuant to Developer's Sub-Lease of a Location to an approved Sub-tenant.

The term "**Interim Term**" shall mean as ascribed in Article 1.01.

The term "**Lease Effective Date**" shall mean the tenth (10th) business day after the date of execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the concession locations as depicted on Exhibit A, "Locations".

The term **"Location Storage"** shall mean up to 20% of the retail space permitted for storage within the Locations.

The term **"Location Commencement Date"** shall mean for each Location, the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date.

The term **"Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Article 3.01.

The term **"Minimum Monthly Guarantee"** shall mean as ascribed in Article 3.01.

The term **"Nonexclusivity"** shall mean as ascribed in Sub-Article 1.10 of this Agreement.

The term **"Market Basket "** shall mean that MIA concession store prices shall not exceed by more than 10% stated market basket of a selection of three (3) Greater Miami Area locations where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels.

The term **"North Terminal"** shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Operational Term"** shall mean as ascribed to in Article 1.02.

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-05-05.

The term **"Refurbishment of Locations"** shall mean the refurbishment and expenditure by the Developer or its Sub-tenants of not less than fifty dollars per square foot (\$50psf) for Approved Improvements to begin no earlier than the fifth (5<sup>th</sup>) Operational Term year of the Agreement and be completed no later than the last day of the fifth (5<sup>th</sup>) Operational Term year of this Agreement.

The term **"Request for Proposal" or "RFP"** shall mean this RFP No. MDAD-05-05, and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Retail"** when used in this Agreement shall mean those newsstand and retail Locations as depicted in Exhibit A of the Lease and Concession Agreement.

The term **"Retail Concession Design Guidelines"** shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in Exhibit E.

The term **"Shell Condition"** shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

The term "**Small Business**" shall mean a business with annual gross sales of five million dollars or less, regardless of the number of employees.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term "**State**" shall mean the State of Florida.

The term "**Sub-Lease**" shall mean the contractual agreement between the Developer and its Sub-tenant.

The term "**Sub-tenant**" shall mean any person, firm, entity or organization, entering into an agreement with Developer for sale, retail products to the public at the Airport at a Location.

The term "**TSA**" shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall mean the date approved by the Department for the Developer to commence construction of a Location.

**FORM OF LEASE AND CONCESSION AGREEMENT  
FOR A NON-EXCLUSIVE  
DEVELOPER  
FOR RETAIL CONCESSION PROGRAM  
AT  
MIAMI INTERNATIONAL AIRPORT**

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and \_\_\_\_\_, ("Developer"), a \_\_\_\_\_ Corporation authorized to do business in the State of Florida.

**RECITALS:**

**WHEREAS**, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

**WHEREAS**, the Department desires to create a retail concessions program in conjunction with the development program for the North, and South Terminal projects; and

**WHEREAS**, the concessions program is designed to provide a locally, nationally, and internationally recognized themed tenant base; and

**WHEREAS**, the retail concessions program will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

**WHEREAS**, Request for Proposal, RFP No. MDAD-05-05 was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Developer,

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**ARTICLE 1 – TERM, EXTENSION AND LOCATIONS**

- 1.01 INTERIM TERM:** The County hereby leases to the Developer the Locations depicted in Exhibit A for the Interim Term which commences on the Lease Effective Date and terminates on the earlier to occur of: 1) the first day of the month following Beneficial Occupancy of the last Location to complete the required improvements pursuant to **Sub-Article 4.01, Improvements To Location** or 2) the first day of the month following three hundred and sixty-five (365) Days after the Lease Effective Date. Notwithstanding the above, the Interim Term may be extended by the County for unforeseen delays.

**1.02 OPERATIONAL TERM:** The County hereby leases to the Developer the Locations depicted in Exhibit A commencing upon the termination of the Interim Term of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8) year thereafter unless sooner terminated. In no event shall this Agreement afford Developer or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

**1.03 EXTENSION:** At the sole discretion of the County, the initial eight (8) year Operational Term may be extended for a maximum of one (2) year term provided the extension is mutually agreed to by the County and the Developer in writing.

In the event the County elects to extend the Agreement, the Developer shall be notified, in writing, no less than three hundred and sixty-five (365) Days prior to the expiration of the Operational Term. The Developer may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

In the event the Developer is in default, pursuant to **Article 12 "Default and Termination by County"** of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

**1.04 LOCATIONS:** The Department hereby provides to the Developer the Locations as depicted in Exhibit A, Locations.

**1.05 LOCATION STORAGE:** The Department hereby identifies to the Developer the Locations Storage as depicted in Exhibit A, Locations.

**1.06 SUPPORT SPACE:** In addition to the Locations provided to the Developer in **Sub-Article 1.04 "Locations"**, the Department may provide administrative and support space, if available, to the Developer.

The Developer shall pay monthly rental payments for the Developer's administrative and storage space at the rate applicable for terminal rental payments and annual adjustments as provided for in **Sub-Article 3.06 Annual Rent**.

**1.07 STORAGE SPACE:** The Department may make available to the Developer, in addition to Location storage, storage space outside of Location(s), if available.

**1.08 COMMON WAREHOUSE SYSTEM:** Due to the fact that storage space is limited in this Agreement and such space is separate from the Locations, should the Developer determine, in its sole discretion, the need to use off-Airport properties for storage space, the Developer shall be entitled through itself, or through an independent third-party contractor, to operate a common logistical support service with respect to the delivery and storage of Sub-tenants' merchandise, inventory, equipment and supplies to a central commissary warehouse location off of the Airport and the re-delivery of Sub-tenants' merchandise, inventory, equipment and supplies to each of the Sub-tenants' Location at the

Airport as approved by the Department. The Department may elect to initiate a Common Logistics Program to assist in storage, delivery equipment and supplies in which case a Common Logistics Fee may be assessed to Developer.

In the event of a Department initiated Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and/or The actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of equipment needed to operate such program), as may be determined by the Department from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Developer by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Developer shall not be entitled to charge Sub-tenants for any of the Developer's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Developer as part Common Logistics Fee shall not be included in Developer's Gross Revenues for any and all purposes of this Agreement. It is recognized by the Department that any such payments by Sub-tenants to the Developer shall not be included in the calculation of the Percentage Fee, if any, from Developer to the Department as provided for in **Article 3.03 "Percentage Fee to the County"**. The Department reserves the right to review the basis of the actual costs and allocation thereof should the Developer elect to implement a common logistics support service program. The Department also reserves the right to approve such program and require that the Developer impose the Common Logistics Fee in a non-discriminatory manner.

**1.09 ADDITION, DELETION AND MODIFICATION OF LOCATIONS:**

- A. ADDITION OF LOCATIONS:** If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional Location to the Developer upon written notification. The Developer will have thirty (30) Days to submit a written response accepting or rejecting the additional Location. Acceptance of any additional Location will require the Department and the Developer to mutually agree upon an applicable retail category as described in Exhibit A at the applicable category percentage fee, **Sub-Article 3.05, Retail Category Percentage Fee**, prior to final approval.
- B. ADDITION OF TEMPORARY LOCATIONS:** The Department reserves the right to require the Developer to provide, and cause to be operated, temporary locations. Any rents for these locations are subject to the terms of this Agreement. The square footage for these temporary locations shall not be included in the calculation of the Minimum Annual Guarantee pursuant to **Sub-Article 3.01**. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.
- C. DELETION OR MODIFICATION OF LOCATIONS:** The Department reserves the right, at its sole discretion, to delete or modify any of the Locations, or any

administrative support and storage spaces due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Developer shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Developer or its Sub-tenants (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.10** for any inconvenience or loss of business as a result of the deletion or modification of any Locations or other space pursuant to this Sub-Article.

- D. ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Articles 1.04 "Locations", 1.05, "Location Storage", 1.06, "support Space", and 1.07 "Storage Space"** and total payments due the Department in accordance with **Article 3, Rentals, Payments and Reports and Article 2 Use of Locations.**

- 1.10 NONEXCLUSIVITY:** This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other Developers and/or others in other locations at the Airport during the Interim Term, Operational Term and any Extension of this Agreement.

- 1.11 CONDITION OF THE LOCATIONS: DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE DEVELOPER ON AN "AS IS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS** including: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Developer to the Department, including any statements relating to the potential success or profitability of such Proposal. Developer represents and warrants that it has made an independent investigation of all aspects of its

Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Developer has satisfied itself as to such suitability and other pertinent matters by the Developer's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Developer accepts the Locations in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Locations to the requirements of applicable law, the Developer assumes sole responsibility for any such work.

- 1.12 CAPITAL IMPROVEMENT PROGRAM:** The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE INTERIM TERM, OPERATIONAL TERM AND ANY EXTENSION OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.
- 1.13 REQUEST FOR PROPOSAL INCORPORATED:** The Developer acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

## ARTICLE 2 – USE OF LOCATIONS

- 2.01 LOCATIONS:** The Locations as referenced in Exhibit A, "Locations" shall be used solely for their assigned and approved concept category unless otherwise modified pursuant to **Sub-Article 2.04. "New Concepts"** Failure to maintain the concept category pursuant to **Article 2 "Use of Locations"** may result in penalties as indicated in **Sub-Article 3.24 "Penalties"**.
- 2.02 USE OF LOCATIONS:** The Developer shall have the right, privilege, and obligation to develop, lease, market and manage and to cause the Sub-tenants to operate and maintain the Locations, depicted in Exhibit A, "Locations", for the purpose of establishing high quality, state of the art retail concessions as approved by the Department.
- 2.03 DEVELOPER SERVICES AND SALES RIGHTS:** The Developer shall not allow any services or the sale of any item or product not specifically covered by the categories approved in this Agreement. Any such sales by the Developer or Developer's Sub-tenants of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Developer shall

discontinue or cause its Sub-tenants to discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Developer or its Sub-tenants to discontinue such sales within 24 hours shall subject the Developer to penalties pursuant to **Sub-Article 3.24 "Penalties"**. Upon the assessment of thirty (30) Days of penalties as to a Location for a Location operated by a Sub-tenant, the Developer shall tender a notice of default to the Sub-tenant(s) in violation, with copies of said default notice to the Director and pursue all remedies available in law and equity to cease such actions. Failure of the Developer to: (i) notify the Sub-tenant(s) of the default, (ii) pursue all remedies available to cease the unauthorized sales or services shall be an event of default and grounds for termination of this Agreement. Upon the assessment of thirty (30) Days of penalties against a Developer for violation committed by such Developer or its Sub-tenant(s), a notice of default will be tendered.

**2.04 NEW CONCEPTS:** The Developer and the Department may modify, by mutual agreement, certain concepts within the established categories and among the Locations. The proposed new concept as agreed to by the Department and the Developer will be reflected in a revised Exhibit A, a revised Percentage Fee as applicable for the category as provided for in **Article 3 "Rentals, Payments and Reports"**, and a revised **Article 2 "Use of Locations"**.

**2.05 SCOPE OF SERVICES:** The Developer hereby agrees that it will finance, design and construct, lease, manage, operate and maintain the Locations depicted in Exhibit A, "Locations", for the purpose of establishing high quality, state of the art retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

**A. Financing:**

Be capable of financing the design, construction and build out of the Locations depicted on Exhibit A, "Locations".

Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Locations.

**B. Developing:**

The Developer shall design a concession program to fulfill the concept categories and submit initially and thereafter annually a merchandising and layout plan identifying the product categories within each Location for each Location. The Developer will be responsible for updating the store layout plan and merchandising plan no less than annually or as necessary throughout the Interim Term, Operational Term and any Extension of this Agreement, providing suggestions as needed for Sub-tenant for each concept for consideration by the Department.

**C. Design and Construction Coordination:**

Design and Construction Coordination requirements are detailed in Sub-Article 4 Improvements to the Locations.

**D. Leasing:**

The Developer shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.
2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, if subleasing is conducted, in accordance with **Article 20, "Sub-Leases"** of the Lease and Concession Agreement no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement.
3. Perform background checks and investigate all prospective Sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:
  - a. Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.
  - b. Preparing term sheets of potential sub-tenant deals, outlining all business terms for the Department's approval.
  - c. List of use and products for each concept.
5. Prepare the appropriate Sub-tenant lease agreement and exhibits.

Sub-Lease agreements shall:

- (1) Not extend beyond the expiration date or termination date of the Lease and Concession Agreement.
- (2) Contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement.

**E. DBE Plan**

1. Maximize DBE and local participation by meeting or exceeding the DBE goal under this Lease and Concession Agreement.
2. Develop, implement, manage, and monitor a program to identify and include Local/Small/DBE businesses in the concession programs.
3. Describe the extent and type of DBE subleasing in the Program.
4. Submit a DBE community and local business opportunities outreach program for concession opportunities, subject to the Department's approval.

**F. Managing**

The Developer shall, if applicable:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the

Agreement identifying the product categories for each Location. The Developer will review the store layout plan no less than annually and update the store layout as necessary throughout the Agreement.

2. Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any Sub-Lease agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for each Location leased.
6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its and its Sub-tenant's financial capacity to perform its obligations under the terms of the Agreement.

#### **G. Operating**

The Developer shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month by its Sub-tenant, by Location, concession category, and product category to be updated on a regular basis.
4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department

6. Ensure compliance, or cause Sub-tenants to comply with the Department and other governmental agency ID Badging requirements.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance. The Developer and/or its Sub-tenants will submit its/their customer service-training program within thirty (30) Days of the Lease Effective Date of the Agreement, for the Department's review and approval.
10. Coordinate and implement regular employee customer service training programs, to include employees from both the Developer and its Sub-tenants, if applicable.
11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

#### **H. Maintaining**

The Developer shall:

1. Maintain or cause to maintain the Locations pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Locations in acceptable condition as required by the Department.

**2.06 ANNUAL PLAN SUBMISSION:** The Developer shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) Days after receipt of the foregoing plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Developer shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

The Department reserves the right to request at any time any further submission of plans.

**2.07 PROHIBITED ACTIVITIES:** Without limiting any other provision herein, Developer or its Sub-tenants shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of

the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Developer or its Sub-tenants to perform its maintenance and repair obligations under this Agreement, Developer or its Sub-tenants shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

### ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

**3.01 MINIMUM ANNUAL GUARANTEE (MAG):** As consideration for the privilege to engage in business at Miami International Airport, Developer shall pay the Department the amount of \_\_\_\_\_ annually as may be reduced by the prorated amount stated below and subject to recalculation pursuant to **Sub-Article 3.03 "Recalculation of the Minimum Annual Guarantee"**, inclusive of Location and Location Storage rent.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law.

Rent is \$56.49 per square foot annually for the lease of the Locations in Exhibit A, Locations, and \$28.25 per square foot annually for the lease of Location Storage in Exhibit A, Locations for the FY05.

Commencing upon the first day of the month after the earlier to occur of (i) Location Commencement Date of each Location or (ii) first day of the Operational Term, Developer shall pay the MAG or prorated MAG, if applicable.

#### **Example for the prorated Minimum Annual Guarantee calculation:**

Commencing upon Location Commencement Date of each Location and Location Storage:

<u>Location</u>	<u>Square Footage</u>	<u>Percent</u>
South Terminal	1,000	50%

Total square footage is divided by the square footage of Location and Location Storage which have received Beneficial Occupancy or for which 120 Days have elapsed after the Turnover Date for such Location and Location Storage.

The total square footage of Location and Location Storage depicted on Exhibit A, Locations of 2,000 square feet divided by the Location and Location Storage square footage of 1,000 receiving Beneficial Occupancy or for which 120 Days have elapsed after Turnover Date equals the percentage rate to be applied to the MAG. If the MAG is \$10,000.00 dollars, then 50% of the MAG is \$5,000.00 dollars, which is due and payable

in twelve equal monthly payments on or before the first day of each month, in advance, without billing or demand, plus applicable state taxes as may be required by law.

**3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS:** The Developer understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Percentage Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Interim Term, Operational Term and any Extension of this Agreement. If the Developer's Locations are so damaged as to significantly impact the Developer's operations for a period in excess of seventy two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

**3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE:** The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

**3.04 PERCENTAGE FEE TO THE DEPARTMENT:** The Developer shall pay the Department the total percentage fee of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater, for each respective package. The monthly percentage fee shall be due on the tenth (10<sup>th</sup>) Day of the month following the month during which the monthly gross revenues were received or accrued. Percentage fees are non-taxable.

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Occupancy for each Location.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.19 "Annual Audit"**, are considered as having been due on the tenth (10<sup>th</sup>) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

To the extent the Developer and the Department mutually agree to change a concept category for a particular Location, then the corresponding percentage fee, as listed per category in **Sub-Article 3.05, "Retail Category Percentage Fee"**, will be adjusted accordingly.

**3.05 RETAIL CATEGORY PERCENTAGE FEE:** The Developer shall pay the Department the Percentage Fee for the corresponding category.

The following is the applicable "Percentage Fee per Category" acceptable for each concept category. See RFP, sub-section 2 XII.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
<b>RETAIL</b>	
<b>Bookstores</b>	<b>9%</b>
<b>News &amp; Gifts</b>	<b>16%</b>
<b>Newsstands</b>	<b>13%</b>
<b>Entertainment &amp; Electronics</b>	<b>8%</b>
<b>Fashion Apparel &amp; Accessories</b>	<b>11%</b>
<b>Gift Specialty Shops</b>	<b>13%</b>
<b>Jewelry, Watches &amp; Accessories</b>	<b>14%</b>
<b>Sundries, Personal Care</b>	<b>14%</b>
<b>Travel Accessories</b>	<b>14%</b>
<b>Services/Cafe</b>	<b>10%</b>

**3.06 ANNUAL RENTAL:** The Developer shall be required to pay rent at the prevailing terminal class rates for the lease of support and storage spaces provided by **Sub-Articles 1.06 and 1.07**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.17, Address for Payments**.

**3.07 DEVELOPER COMPENSATION:** In consideration for the services provided under this Agreement, the Developer shall retain up to three percent (3%) of the Developer's blended rate, in excess of the County's blended rate, as determined in **Article 3.04 "Percentage Fee to the Department"**.

The Developer's blended rate shall be determined by the sum of the product of the monthly Gross Receipts and the percentage fees negotiated by the Developer with its Sub-tenants, per Location, per category and divided by the total Gross Receipts, to arrive at the Developer's blended rate.

This blended rate will be multiplied by the total Gross Receipts to produce the Developer's percentage amount. If any portion of this percentage amount exceeds the County's blended rate percentage amount, the Developer will retain up to the initial three percent (3%) of the total monthly Gross Receipts.

In the event the Developer's blended rate exceeds the Department's blended rate by more than three percent (3%), the Developer and the County shall share equally in any amount, which exceeds such three percent (3%).

The Developer will include in its monthly reports to the County under this Agreement, monthly totals and running totals for each calendar year of Gross Receipts calculations and details of the fee under this Sub-Article.

**3.08 ANNUAL RENTAL RATE ADJUSTMENT:** On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 3.06, "Annual Rental"** shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten Days of same.

**3.09 COMMON WAREHOUSE LOGISTICS FEE:** In the event the Department initiates a Common Logistics Program the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or Developer from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Developer by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Developer shall not be entitled to charge Sub-tenants for any of the Developer's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Developer as part of the Common Logistics Fee shall not be included in Developer's Gross Revenues for any and all purposes of this Agreement, it being recognized by the Department that any such payments by Sub-tenants to the Developer shall not be included in the calculation of the Percentage Fee, if any, due from Developer to the Department as provided for in **Sub-Article 3.04 "Percentage Fee to the County"**. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Developer elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Developer impose the Common Logistics Fee in a non-discriminatory manner within store categories.

- 3.10 CONCESSION MARKETING FEE:** A concession marketing fee of one half (1/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the first Location opening on the twentieth (20<sup>th</sup>) of each month to be used for marketing the concessions at the Airport.
- 3.11 MAG PERFORMANCE BOND:** Within thirty (30) Days of the award of this Agreement, the Developer shall provide the Department a Performance Bond to guarantee payment of the MAG and non Location rent. Developer shall keep such Performance Bond in full force and effect during the Interim Term and Operational Term and any Extension of this Agreement, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The form of security shall initially be in an amount equal to seventy-five percent (75%) of the MAG and rent. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and non Location rent.

The Department may draw upon such form of security instrument, if the Developer fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Developer shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Developer is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Developer within one hundred eighty (180) Days after the end of the Operational Term or any Extension of the Operational Term.

- 3.12 TAXES:** The Developer shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Developer to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, penalties and charges levied thereon. The Developer hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Developer and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Developer to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and penalties payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

- 3.13 REPORTS OF GROSS REVENUES:** On or before the tenth (10<sup>th</sup>) Day following the end of each month throughout the Interim Term, Operational Term and any Extension of this Agreement, the Developer shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Developer shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Developer. The statement must be signed by an officer (if the Developer is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Developer, and identify all Gross Revenues by Location reported to the Developer during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee penalty of fifty dollars (\$50.00) per Day, as provided in Sub-Article 3.24 "Penalties".
- 3.14 OTHER REPORTS:** The Developer shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.
- 3.15 LATE PAYMENT:** In the event the Developer fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.
- 3.16 DISHONORED CHECK OR DRAFT:** In the event the Developer delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Developer shall incur and pay a service fee of TWENTY-FIVE DOLLARS (\$25.00), if the face value of the dishonored check or draft is fifty dollars (\$50.00) or less, THIRTY DOLLARS (\$30.00) if the face value of the dishonored check or draft is more than fifty dollars (\$50.00) and less than three hundred dollars (\$300.00), or FORTY DOLLARS (\$40.00), if the face value of the dishonored check is three hundred dollars (\$300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.
- 3.17 ADDRESS FOR PAYMENTS:** The Developer shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:

**In Person:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300

During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday:

**By Mail:** Miami-Dade Aviation Department  
Finance Division  
P.O. Box 592616  
Miami, Florida 33159

**By Express Mail:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300  
Miami, Florida 33122

**By Wire Transfer:** In accordance with Wire Transfer instructions provided by MDAD's Finance Division, 305-876-7383.

- 3.18 REVENUE CONTROL PROCEDURES:** Notwithstanding anything to the contrary contained herein, the Developer shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Developer with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Developer to implement any such revenue control procedures.
- 3.19 ANNUAL AUDIT:** Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Developer shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its and each Sub-tenants Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.
- 3.20 RIGHT TO AUDIT/INSPECT:** The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Developer may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this

Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Developer for recording or compiling Gross Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Developer.

If it is established that the percentage fees have been underpaid to the Department, the Developer shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such amount or amounts should have been paid.

Further, if such examination establishes that Developer has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Developer.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Developer shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Developer to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

- 3.21 RECORDS AND REPORTS:** The Developer shall, at all times during the Interim Term and Operational Term of this Agreement, or any Extension hereof and in accordance with applicable law, maintain at the Developer's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Locations, in a form consistent with good accounting practice. In addition, Developer shall install or cause to be installed for use at all times in each Location such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from each Location. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Developer shall account or shall cause its Sub-tenants to account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Developer (and of the

Sub-tenants, as the case may be) and which supports the amounts reported to the Department in the Developer's monthly schedules. At a minimum, the Developer's accounting for such receipts shall include the following:

1. Developer's bank account statements (separate bank accounts shall be maintained for receipts from Sub-tenants' payments to the Developer and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Developer's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Developer's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Developer's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, including the general ledger and bank statements and all federal, state and local tax returns relating to Sub-tenant's sales, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Developer shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Locations will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Developer's business.

**3.22 ADDITIONAL FEES DUE:** If the Department has paid any sum or has incurred any obligation or expense for which the Developer agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Developer to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

**3.23 UTILITIES:** The cost of all utilities used or consumed on the Locations shall be borne by the Developer; provided, however, except with respect to the Developer's support and storage space as defined in Sub-Articles 1.06 and 1.07 at the Airport, the Developer shall be entitled to pass the cost of all utilities used or consumed to the Sub-tenants at the same rates as billed to the Developer without any administrative mark-up or profit. The Department requires the Developer where such capability exists, to provide and install or

cause the Sub-tenants to provide and install meters for utilities used at the Developer's or its Sub-tenant's expense. If the Locations are not provided with separate electric, gas, and/or water meters, the Developer agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Developer on actual usage measured by temporary meters, arranged and paid for by the Developer. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Developer hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Developer shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

- 3.24 PENALTIES:** If Developer or its Sub-tenants default under any of the covenants or terms and conditions, of this Agreement, Department may elect to impose the financial penalties described below, as a result of the violation(s), on a daily basis, in addition to any other penalties permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

<u>Violation</u>	<u>Fee</u>
Violation of Permitted Use of a Location	\$ 100 per Day/per Location
Failure to Maintain Required Hours of Operation	\$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	\$ 50 per Day/per Location
Unauthorized Advertising	\$ 50 per Day/per Location
Failure to maintain Location clean	\$ 50 per Day/per Location
Failure to maintain Market Basket Pricing or to conduct the surveys as required	\$ 50 per Day/per Location
Installation of Unapproved Items in Locations	\$ 50 per Day/per Location
Violations of other terms and conditions	\$ 75 per Day/per Location

The foregoing is due and payable from the Developer; however, it shall not be construed as prohibiting the Developer from imposing the financial penalties described above, as a result of the Sub-tenant's violation(s), on a daily basis, on the applicable Sub-tenants, in addition to any other penalties permissible by law and/or pursuant to the provisions of the Sub-Lease agreements, until said violations are remedied by the applicable Sub-tenants.

- 3.25 PAYMENT SECURITY:** The Developer shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG and twenty-five percent (25%) of any annual rent, which may be required by **Sub-Articles 1.06 and 1.07**. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and annual rent. This requirement shall be met no later than thirty (30) Days after the Lease Effective Date of the Agreement. The payment security shall be kept in full force throughout the Interim Term, Operational Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the

Developer fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Developer shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

#### ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

**4.01 IMPROVEMENTS TO LOCATIONS:** The Developer shall be required to invest a minimum of two hundred dollars per square foot (\$200.00 psf), for Approved Improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Developer pursuant to **Sub-Article 1.09(A) “Addition of Location”**. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of soft costs permitted to be included as Approved Improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Developer to build such improvements in compliance with MDAD TAC procedures.

It is the intent of the parties that Approved Improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the Final Plans, as such term is defined in **Sub-Article 4.02 “Design of Improvements”**.

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.09 “Cost Documentation”**, and (iii) can be removed without damage to the premises. The Developer is liable and shall indemnify the Department for any damage to the Locations which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Locations, as stated in **Article 4 “Improvements to the Locations”** or as an extension of this Agreement, and costs incurred by either the Developer or its Sub-tenants to provide such storage space shall not constitute Approved Improvements.

**4.02 DESIGN OF IMPROVEMENTS:** Plans for the design of improvements will be in accordance with Exhibit E “Retail Concessions Design Guidelines”, Exhibit F “Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures” or Exhibit M “Tenant Airport Construction Reimbursable Projects (TAC-R)

Design and Construction Procedures”, as applicable, the “MDAD Life Safety Master Plan” and the “MDAD Design Guidelines Manual” ([www.Miami-Airport.com](http://www.Miami-Airport.com)) as may be established for the Terminal Retail Program. As plans for the improvement of individual Locations or common area improvements are completed, the Developer shall submit to the Department for review, approval or modification detailed final plans (“Final Plans”) and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

- 4.03 REFURBISHMENT OF LOCATIONS:** The Developer will be required to refurbish the Locations or cause its Sub-tenants to refurbish their respective Locations to begin no earlier than the fifth (5<sup>th</sup>) Operational Term year of the Agreement and be completed no later than the last day of the fifth (5<sup>th</sup>) Operational Term year of this Agreement.

Approved Improvements for the refurbishment of the Locations shall not be less than fifty dollars per square foot (\$50 psf). There will be no reimbursement or amortization of these costs for refurbishment.

- 4.04 DEVELOPER DEVELOPMENT REQUIREMENTS:** The Developer for Package One (1) and Package Two (2), at no expense to the Department, will have an investment requirement to develop and install retail vitrines in the South Terminal as depicted in Exhibit E “Retail Concession Design Guidelines”.

- 4.05 CERTAIN CONSTRUCTION CONTRACT TERMS:** All contracts entered into by the Developer and/or its Sub-tenants for the construction of the Improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02 “Design of Improvements”** and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the County in the event the contractor fails to complete the construction on time. The Developer agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Developer, the Developer shall provide or cause to be provided to the County copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Exhibit B, “Surety Performance and Payment Bond” provided by Developer to the County in the form contained in Exhibit B “Surety Performance and Payment Bond” in the Lease and Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation contract.

- 4.06 IMPROVEMENTS FREE AND CLEAR:** The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County’s obligation to reimburse the Developer for the un-amortized value of the Approved Improvements as provided in this Agreement.

The Developer agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Developer for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the locations or improvements.

- 4.07 OTHER REQUIREMENTS:** The Developer shall or shall cause the Sub-tenants to apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Developer shall furnish or shall cause the Sub-tenants to furnish to the Developer and the County one complete set each of legible prints (black line), photo mylars and 35 mm aperture card microfilm of construction drawings, and auto cad files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Developer does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

Any change in the Location, concept or tenant proposed in response to the Request for Proposals must be approved in writing by the County. The Sub-tenant occupying the Location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing with a copy to the County and an opportunity to respond in writing to the County and have an opportunity to be heard by the County.

- 4.08 REVIEW OF CONSTRUCTION:** The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Developer or the Sub-tenant and approved by the County.
- 4.09 COST DOCUMENTATION:** Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01 "Improvements to Locations", 4.03 "Refurbishment of Locations", and 4.04 "Developer Development Requirements"**, the Developer shall submit to the County a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit"). The Developer or the Sub-tenants, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Developer or the Sub-tenants and approved by the County, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Developer or the Sub-tenants, as the case may be. No non-receipted expenditures will be credited. Developers not submitting certified audits within the allotted time may be billed a penalty of fifty dollars (\$50.00) per

Day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten per cent (10%) of the monies due the County on the build-out of the Locations. In the event of any disputes between the County and the Developer as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Developer in writing that it has approved or disapproved the certified costs for each Location and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Developer fails to submit the Certified Audit within the time prescribed above for any Location, then a penalty will be assessed as noted in **Sub-Article 3.24 "Penalties"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Developer for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.10 "Amortization Schedule"** shall equal the lesser of two hundred dollars (\$200) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Developer or its Sub-tenant's minimum investment and is depicted as such in the results of the Certified Audit, the Developer shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Location.

If the approved total receipted amount for Refurbishment of Locations is below the Developer's or its Sub-tenant's investment, the Developer shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

The Developer shall be entitled to obtain reimbursement of such payments made to the Department from the applicable Sub-tenant(s) who fails to spend the minimum investment or the refurbishment amount for their specific Locations.

**4.10 AMORTIZATION SCHEDULE:** The Developer shall amortize its capital investment for a period not to exceed (60) months using the straight-line depreciation method. If, at any time during the Operational Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Locations at its sole discretion and reimburse the Developer the unamortized balance of Approved Improvements for that Location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.
2. Stores displays more than \$500 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.

3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Developer will be required to confirm the Minimum Investment within one hundred twenty (120) Days of Beneficial Occupancy for each Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the (\$200/psf) minimum, the Developer will be required to pay the Department the difference between the Minimum Investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

Developers not submitting a certified audit within the allotted time may be billed a penalty of fifty dollars (\$50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five percent (25%) of the monies due the Department on the build-out of the Locations.

Prior to the commencement of any construction installation or work by the Developer, the Developer shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Performance and Payment Bond provided by Developer to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Agreement. The Performance and Payment Bond shall be in full force throughout the term of the installation / construction contract.

- 4.11 **CONSTRUCTION PERMIT FEE:** The Developer shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Developer to the Department is an amount equal to one percent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Developer's and Sub-tenant's plans/specifications. Such fee shall be non-refundable. The Developer shall be entitled to require the Sub-tenants to pay their proportionate share for the construction costs for the improvements to be made by the Sub-tenants in each Location.

- 4.12 **CONSTRUCTION SERVICES:** The Developer shall provide at a minimum, but not limited to, the following design and construction services:

- 1) **Developer Improvements**

Pursuant to the terms of this Agreement, the Developer shall construct or cause to construct certain improvements. The Department shall provide the Developer with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Developer and the Department, the Developer shall provide the

Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Developer have mutually agreed on the scope of the improvements and the preliminary estimates, the Developer shall proceed to design and construct or cause to be designed and constructed the improvements in accordance with the provisions of this Agreement.

**2) Design and Construction Coordination**

a. Developer shall:

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized administrative support space including those of Sub-tenants.
2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide Sub-tenants, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Developer development requirement, whereby such elements are the designated responsibility of the Developer, if so implemented.

**3) Construction**

Developer shall:

1. Attend or cause Sub-tenants to attend pre-construction meetings, construction meetings, coordinate construction with Sub-tenants if applicable, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to and or cause Sub-tenants to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations, including those of any Sub-tenants.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-

- day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.
6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
  7. Establish a uniform system for the timely processing and control of drawings.
  8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
  9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
  10. Monitor punch list completion and review testing and inspection reports for all Locations.
  11. Organize and have available upon request completed project files.
  12. Coordinate access to the Location to allow staff training and equipment testing.
  13. Obtain Certificate of Occupancy for each Location.
  14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

## ARTICLE 5 – STANDARDS OF OPERATION

**5.01 STANDARDS OF OPERATION:** The Developer shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" available on [www.miami-airport.com](http://www.miami-airport.com), and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Developer agrees to observe and obey and cause its Sub-tenants to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Developer. The Developer shall distribute such rules and regulations and operating performance standards to its Sub-tenants. The Department shall provide the Developer with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Developer shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Developer shall immediately implement and comply and shall cause its Sub-tenants to immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

The Developer acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

- 5.02 MARKET BASKET PRICING POLICY:** The Department has instituted a Market Basket pricing policy to ensure that Airport prices are comparable to retail in the Miami Dade County, Florida area to reinforce the objective of making the Airport a more "passenger friendly" airport, pursuant to Exhibit L "Standards of Operation."

The Developer or its Sub-tenants who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to **Sub-Article 18.09** to bring all products into compliance. Failure to do so shall subject the Developer to penalties pursuant to **Sub-Article 3.24 "Penalties"** and shall constitute a default under this Agreement.

## ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

### 6.01 DEPARTMENT SERVICES:

- A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Developer or its Sub-tenants, and further provided that the Developer shall or shall cause its Sub-tenants to reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Developer, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Developer shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in

harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

- B. The Developer must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Developer's or Sub-tenant's Locations are of such a condition as to significantly impact the Developer's or a Sub-tenant's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Developer pursuant to this Agreement or the Sub-tenant pursuant to the Sub-Lease or license agreement, the Department may provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

- C. No Other Obligation of Department: The Developer acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Developer's or its Sub-tenant's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Developer or its Sub-tenants.

1. The Developer hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Sub-tenants to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Developer by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.

3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Developer under or in connection with this Agreement.
4. The Department shall not be liable to the Developer for any loss of business or damages sustained by the Developer as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

## ARTICLE 7—FURNITURE, FIXTURES AND EQUIPMENT

- 7.01 FURNITURE, FIXTURES, AND EQUIPMENT:** Any equipment, furnishings, fixtures and signs installed in the Locations by the Developer or its Sub-tenant shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Developer or its Sub-tenant, as provided in **Sub-Article 4.01 “Improvements to Locations”**, shall, except as provided in **Sub-Article 7.03(B) “Disposal of Furniture, Fixtures, and Equipment”**, be removed from the Locations within five (5) Days following the expiration or earlier termination of this Agreement.
- 7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS:** The Developer will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the “ADA”), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities’ locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity’s ADA obligations. In most cases the ADA obligations of the Department and the Developer will be the same. However, the Department reserves the right to require the Developer to modify its or its Sub-tenant’s operations or its physical locations to comply with the Department’s ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.
- 7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT:** At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 “Default and Termination by County”** or **Article 13 “Claims and Termination by Developer”** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Locations by the Developer or any Sub-tenant:
- (A) Require the Developer to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 “Improvements to Locations”**; or

- (B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Developer or any Sub-tenant (personal property as referred to in **Sub-Article 4.01 "Improvements to Locations"**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Developer or any Sub-tenant).

## ARTICLE 8 – MAINTENANCE

- 8.01 CLEANING:** The Developer shall, at its cost and expense, keep or cause its Sub-tenants to keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean as provided in the Standards of Operation, Exhibit L, the Developer will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in penalties being assessed pursuant to **Sub-Article 3.24 "Penalties"**.
- 8.02 REMOVAL OF TRASH:** The Developer shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Developer enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Locations, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. The Developer shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Developer and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in penalties being assessed pursuant to **Sub-Article 3.24 "Penalties"**.

The Department reserves the right to charge the Developer retroactively non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

- 8.03 MAINTENANCE AND REPAIR:** Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Developer shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Developer or its Sub-tenants specifically

as a result of their operation shall remain the obligation of the Developer or its Sub-tenants. The Developer shall repair or cause to be repaired, at or before the end of the Operational Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Developer notice no less than two (2) hours in advance so that a representative of either the Developer and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Developer in writing. If said maintenance is not performed by Developer (or if the Developer fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Developer for such services, as provided by **Sub-Article 8.04**.

- 8.04 FAILURE TO MAINTAIN:** Upon failure of the Developer or its Sub-tenants to maintain the Locations as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Developer, in addition to any penalties imposed by the Department pursuant to **Sub-Article 3.24 "Penalties"**.

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in **Sub-Article 12.02 "Payment Default"**.

- 8.05 ENVIRONMENTAL RECYCLING:** The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Developers. Participation in this program, once established, will be mandatory. The Developer and/or its Sub-tenants shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Developer or its Sub-tenants is the sole responsibility of the Developer. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

- 8.06 FIRE PROTECTION AND SAFETY EQUIPMENT:** The Developer and its Sub-tenants must provide and maintain all fire protection and safety equipment and all other

equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Interim Term, Operational Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Locations.

## ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

**9.01 NO ASSIGNMENT:** The Developer shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Developer allow others to use the Locations, without the prior written consent of the Department.

**9.02 OWNERSHIP OF THE DEVELOPER:** Since the ownership, control, and experience of the Developer were material considerations to the County in the award of this concession and the entering into of this Agreement, the Developer shall take no actions which shall serve to transfer or, sell majority ownership or control (deemed to mean more than fifty percent (50%) of the stock) of the Developer without the prior written consent of the Department.

**9.03 CHANGE OF CONTROL:** If Developer is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Developer to result in a change of control of Developer shall be deemed an assignment of this Agreement for purposes of this **Article 9 “Assignment and Ownership”**. If the Developer is a partnership, transfer of any interest in the partnership, which results in a change in control of such Developer (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 “Assignment and Ownership”**.

**9.04 HOLDOVER:**

**A. With the Department’s Permission:**

If the Developer (or anyone claiming through Developer) shall remain in possession of the Locations of no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement.

**B. Without Department Permission:**

If the Developer (or anyone claiming through Developer) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department’s other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Developer shall thereafter pay on account of its holdover use

and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS monthly Percentage Fee PLUS monthly installment of the support space annual lease rental pursuant to **Sub-Article 3.06 "Annual Rental"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Developer by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Developer shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

## ARTICLE 10 – INDEMNIFICATION

**10.01 INDEMNIFICATION REQUIRED OF DEVELOPER:** The Developer shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Developer or its employees, agents, servants, partners, principles or any other persons. The Developer shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

The Developer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

## ARTICLE 11 – INSURANCE

**11.01 INSURANCE REQUIRED OF DEVELOPER:** Prior to execution of this Agreement by the County and commencement of the Interim Term of this Agreement, the Developer shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 592075, Miami, Florida 33159-2075 for approval. All insurance shall be maintained throughout the Interim Term, Operational Term and any Extensions of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Developer's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Developer and its Sub-tenants must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

- A. Workers' Compensation as required by Chapter 440, Florida Statutes.
- B. Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Developer in the performances of this Agreement.

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\*Under no circumstances is the Developer or its Sub-tenants allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Risk Management Office.

**11.02 CERTIFICATE OF CONTINUITY:** The Developer shall be responsible for assuring that the insurance certificates required in conjunction with Article 11 "Insurance" remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Developer shall be responsible for submitting new or renewed insurance certificates for its and its Sub-tenants' operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

**11.03 INSURANCE COMPANY RATING REQUIREMENTS:** All insurance policies required above from the Developer and its Sub-tenants shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

- 11.04 DEVELOPER LIABLE:** Compliance with the requirements as to carrying insurance in Article 11 "Insurance" shall not relieve the Developer and its Sub-tenants from liability under any other provision of this Agreement.
- 11.05 CANCELLATION OF INSURANCE OR BONDS:** Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.
- 11.06 RIGHT TO EXAMINE:** The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Developer and its Sub-tenants (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Developer agrees to permit or cause its Sub-tenants to permit such inspection at the offices of the Developer and/or its Sub-tenants, as may be applicable. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Developer and/or its Sub-tenant agree to provide copies to the Department, at the Developer's or Sub-tenant's sole cost and expense.
- 11.07 PERSONAL PROPERTY:** Any personal property of the Developer or its Sub-tenants, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Developer or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.
- 11.08 SURVIVAL OF PROVISIONS:** The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.
- 11.09 INSURANCE REQUIRED OF SUB-TENANTS:** The limits for each type of insurance may be revised upon review and approval of the Sub-tenant's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

The Developer shall cause its Sub-tenant to provide certificates of insurance indicating the following types of insurance coverage prior to any occupation of the premises:

- A. Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County must be shown as an additional insured with respect to this coverage.

The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the contractor(s) in the performances of the construction contract.

- B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\*Under no circumstances is the Developer or a Sub-tenant allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Safety and Insurance Office.

- C. **Certificate Continuity:** The Developer and its Sub-tenants shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the lease, including any and all option years, if applicable. If insurance certificates are scheduled to expire during the contract period, the Sub-tenant shall be responsible for submitting new or renewed insurance certificates to the Developer at a minimum of thirty (30) Days before such expiration.
- D. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the MDAD's Safety and Insurance Office.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

- E. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Developer agrees to permit or cause such inspection to be permitted at the offices of the Department.

#### 11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

- A. **Indemnification, Bonds and Insurance Required from Construction Contractor:** The following language, including the indemnification clause, shall be included in all construction contracts between the Developer and its general contractor(s) and subcontractors and shall also be included in all construction contracts between the Sub-tenants and their respective general contractors and subcontractors:

**Indemnification:** The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Lessee of the locations, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability,

losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnitee arising from the contract or its performance shall be limited to the greater of \$1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

- B. **Surety Performance and Payment Bonds:** Pursuant to and in accordance with Section 255.05, Florida Statutes, the Developer or each contractor performing any part of the work for the Developer or its Sub-tenants shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Surety Performance and Payment Bond". Within ten (10) Days of issuance, Developer shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the Developer shall deliver to County the Bonds required to be provided by Developer or each contractor as set forth in this Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
\$ 500,001 to \$1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over \$10,000,000	A IX

For contracts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

- a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.
- b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
- c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.
- d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.
- e) For contracts in excess of \$500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- g) The attorney-in-fact or other officer who signs an Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

The Bond shall be delivered to the Department upon execution of the contract between the Developer and its contractor or the Sub-tenant and its contractor, as the case may be.

- C. **Insurance Required of Construction Contractor(s):** The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Developer shall cause its contractor(s) and the Sub-tenants' respective contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance

with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

- (a) Workers' Compensation as required by Chapter 440, Florida Statutes.
- (b) Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Developer must be shown as an additional insured with respect to this coverage.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000\* per occurrence for Bodily Injury and Property Damage combined.

\*Under no circumstances is the contractor allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Safety and Insurance Office.

- D. **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Developer and approved by the Developer and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Developer at a minimum of thirty (30) Days before such expiration.
- E. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:  
  
The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Developer.
- F. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Developer to agree to permit such inspection at the offices of the Department.
- G. **Personal Property:** Any personal property of the contractor, or of others, placed in the Locations shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

## ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

**12.01 EVENTS OF DEFAULT:** A default shall mean a breach of this Agreement by the Developer (an “Event of Default”). In addition to those defaults defined in **Sub-Article 12.02 “Payment Default”, Sub-Article 12.03 “Other Defaults”, and Sub-Article 12.04 “Habitual Default”**, an Event of Default, may also include one (1) or more of the following occurrences:

- (A) The Developer or its Sub-tenant has violated the terms and conditions of this Agreement;
- (B) The Developer or its Sub-tenants has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;
- (C) The Developer has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Developer’s creditors, or the Developer has taken advantage of any insolvency statute or debtor/creditor law, or the Developer’s affairs have been put in the hands of a receiver;
- (D) The occurrence of any act, which operates to deprive Developer of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
- (E) Abandonment or discontinuance of operations by Developer of its business by any act(s) of Developer;
- (F) Any persistent violation on the part of Developer, its agents or employees of the traffic rules and regulations of City at Airport or disregard of the safety of persons using the Airports, upon failure by Developer to correct the same;
- (G) Failure on the part of Developer to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Developer being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;
- (H) Failure by Developer or its Sub-tenants to maintain its other equipment in a manner satisfactory to the Director;
- (I) The Developer or its Sub-tenants has failed to obtain the approval of the Department where required by this Agreement;
- (J) The Developer or its Sub-tenants has failed to provide adequate assurances as required under **Sub-Article 12.09 “Adequate Assurances”**;
- (K) The Developer has failed to comply with any provision of Sub-Article 14.07 “Disadvantaged Business Enterprise Participation Plan”;
- (L) The Developer has failed in a representation or warranty stated herein; or
- (M) The Developer has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

**12.02 PAYMENT DEFAULT:** Failure of the Developer to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Developer.

**12.03 OTHER DEFAULTS:** The Department shall have the right, upon thirty (30) Days written notice to the Developer to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period shall be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Developer commences to cure such default and thereafter diligently and continuously continues to cure such default:

- (A) Failure of the Developer to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default"**.
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.
- (C) Any Event of Default.

**12.04 HABITUAL DEFAULT:** Notwithstanding the foregoing, in the event that the Developer has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Developer, regardless of whether the Developer has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Developer may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Developer a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Developer that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Developer, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Developer shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Developer shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10 "Actions at Termination"** hereof.

**12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE:** If an Event of Default occurs, the Department shall notify the Developer by sending a notice of default, specifying the basis for such Event of Default, and advising the Developer that such

default must be cured immediately or this Agreement with the Department may be terminated. The Developer can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Developer's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Developer has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Developer shall discontinue the services.

**12.06 UNAMORTIZED INVESTMENT EXTINGUISHED:** Termination of this Agreement based upon **Sub-Article 12.07 "Termination for Abandonment"**, **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, **Sub-Article 12.04 "Habitual Default"**, or **Sub-Article 12.08 "Termination for Cause"**, shall extinguish any unamortized investment amounts owed the Developer by the Department, for the slippage in Location Turnover Dates.

**12.07 TERMINATION FOR ABANDONMENT:** This Agreement may be terminated in its entirety upon the abandonment by the Developer of the Locations or the voluntary discontinuance of Developer's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Developer from providing services on the Locations for the purposes authorized in **Article 2 "Use of Locations"**. The foregoing shall not include periodic Sub-tenant vacancies in individual Locations that may occur from time to time during the Interim Term and Operational Term of this Agreement, including any Extension.

**12.08 TERMINATION FOR CAUSE:** The County may terminate this Agreement, effective immediately if: (i) the Developer attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Developer is convicted of a felony during the Interim Term, Operational Term or any Extensions thereof if applicable. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Developer may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

**12.09 ADEQUATE ASSURANCES:** When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Developer's ability to perform the work or any portion thereof, the Department may request that the Developer, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Developer's ability to perform in accordance with terms of this Agreement. In the event that the Developer fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

**12.10 ACTIONS AT TERMINATION:** The Developer shall, upon receipt of such notice to terminate, and as directed by the Department:

- (A) Stop all work as specified in the notice to terminate;
- (B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property;
- (C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County on or before the date of termination.

### ARTICLE 13 – CLAIMS AND TERMINATION BY DEVELOPER

**13.01 ADMINISTRATIVE CLAIM PROCEDURES:** If the Developer has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Developer at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Developer mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Developer's receipt of such decision, the Developer files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Developer shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Developer shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Developer to comply with this

administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

**13.02 TERMINATION:** The Developer shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Developer of the existence of such breach.
- (D) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Developer's provision of services for a period of one hundred eighty (180) Days.

#### **ARTICLE 14 - DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**14.01 DBE REQUIREMENTS:** The Department has established a DBE goal for Package One (1) of 30%, and a DBE goal for Package Two (2) of thirty percent (30%) participation for certified DBE's in connection with this Agreement

The Developer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting DBE revenue and operational expenses, on or before the tenth (10<sup>th</sup>) day of every month.

**14.02 COUNTING DBE PARTICIPATION TOWARD CONTRACT GOALS:** When a DBE participates in a contract; only the value of the work actually performed by the DBE toward the DBE goal will be counted.

When a DBE performs as a participant in a joint venture, a portion of the total dollar value of the contract during the complete contract term, equal to the distinct clearly defined portion of the work of the contract that the DBE performs will be counted toward DBE goals as outlined in Appendix C "Disadvantage Business Enterprise Participation Plan/Provision".

Expenditures to a DBE contractor toward DBE goals will be counted only if the DBE is performing a commercially useful function as defined below:

- A. DBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the specific identified work.
- B. The Department will determine whether a DBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- C. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
- D. If a DBE does not perform or exercise responsibility for at least their percentage of its participation or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a commercially useful function.
- E. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this Article, the DBE may present evidence to rebut this presumption. The Department will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The Department's decision on commercially useful function matters is final.

**14.03 DBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:**

The Developer may satisfy a part of the DBE goal by Joint Venturing with a DBE. The DBE partner must meet the eligibility standards set forth in 49 CFR Part 23, Subpart F. A "joint venture" or ("JV") shall mean and may be referred to as an "association" of two or more businesses acting as a Developer and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The joint venture agreement must specify the following:

- A. Each DBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-DBE JV partner.
- B. The work should be submitted as part of this RFP and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the DBE joint venture partner should be Store-specific with regards to tasks and Locations. The DBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten (10) hours per week.

Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the Monthly Report of DBE Joint Venture Activity (Appendix C, page 12), providing details of how the performance objectives were achieved and providing documentation of the achievement on the DBE form on page 12 of Appendix C. This information should include, but not be limited to:

Details of training sessions, including class rosters and lesson plans.

1. Deliverables and work products.
  2. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
  3. Proof that employees of partners actually work for them (payroll, payroll tax returns, and the like).
- C. Each DBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.
- D. Each DBE JV partner must perform work that is commensurate with the Agreement.

As described below, each DBE must submit, as part of its DBE Plan, a plan for the achievement of the DBE goal, including Schedule of Participation and the Letter of Intent from certified DBE's, or who have applied for certification through the Miami-Dade County Department of Business Development, as required by the Disadvantaged Business Enterprise Participation Plan.

Without limiting the requirements of the Agreement, the Department will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

**14.04 CERTIFICATION-DISADVANTAGED BUSINESS ENTERPRISE (DBE):** DBE firms must maintain their certification throughout the Interim Term, Operational Term and any Extension of this Agreement.

**14.05 AFFIRMATIVE ACTION AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:** The Developer acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Subpart F, Disadvantaged Business Enterprise Programs, are applicable to the activities of the Developer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not be limited to, the compliance with Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the

Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Developer has defaulted in the requirement to comply with the provisions of this Article and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Developer, to terminate this Agreement, pursuant to the default language referenced in the Agreement.

The Agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23, Subpart F. The Developer agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any lease and concession agreement covered by 49 CFR Part 23, Subpart F.

The Developer agrees to include the above statements in any subsequent lease and concession agreements.

**14.06 DBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:** Consistent with the goal of providing DBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Sub-Article 14.07 "Disadvantaged Business Enterprise Plan"** hereof, each DBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to, the following specific duties and responsibilities:

1. Store Operations
  - a. Passenger profile analysis
  - b. Cash handling/sales audit
  - c. Enhancing sales
  - d. Selling to the customer
  - e. Staffing to meet customer levels
  - f. Opening and closing procedures
2. Personnel
  - a. Employment practices
  - b. Compliance with wage and hour laws
  - c. Compliance with County and Airport requirements
  - d. Designing compensation and benefits plans
  - e. Management and staff training to enhance product knowledge and customer service
  - f. Warehousing, packaging and sales reporting of merchandise
3. Design and Display
  - a. Retail layout
  - b. Merchandising techniques
  - c. Visual display techniques

4. Loss Prevention
  - a. External and internal theft
  - b. Shop security
5. Books, Records and Reports
  - a. The books of account and supporting records of the Developer and the Sub-tenant(s) shall be maintained at the principal office and shall be open for inspection by the Department or the DBE Sub-tenant(s) or joint venture(s), upon reasonable prior written notice, during business hours.
  - b. The Developer books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Developer shall provide to the Sub-tenant(s) or joint venture(s), within an agreed upon time after the end of each month during the term of the Agreement, an un-audited operating (i.e., income) statement for the preceding month and for the year to date.
  - c. Reports of the DBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered; total number of hours of training; training material covered; etc.).

**14.07 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:** The Developer shall contract with those firm(s) as are listed on the Developer's DBE Participation Plan and approved by the Department, and shall thereafter neither (i) terminate such DBE firms(s), (ii) reduce the scope of the work to be performed, (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the DBE firm(s) without the prior written authorization of the Department.

The Department shall monitor the compliance of the Developer with the requirements of this provision as referenced in **Sub-Article 14.01 "DBE Requirements"** during the Interim Term, Operational Term and /or Extension, if applicable. The Department shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, Sub-tenant Gross Revenues, records, records of expenditures, Sub-tenant Agreements between the Developer and DBEs, and other records pertaining to the DBE Participation Plan.

If at any time the Department has reason to believe that the Developer is in violation of this provision, the Department may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination of this Agreement in whole or in part, unless the Developer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the Department upon the Developer except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Aviation Director.

## ARTICLE 15- RULES, REGULATIONS AND PERMITS

- 15.01 RULES AND REGULATIONS:** The Developer shall comply and cause its Sub-tenants to comply, with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder by the Department, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.
- 15.02 VIOLATIONS OF RULES AND REGULATIONS:** The Developer agrees to pay, on behalf of the County, any penalty, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Developer, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Developer further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreements which the Developer may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.
- 15.03 PERMITS AND LICENSES:** The Developer shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services. The Developer shall cause its Sub-tenants to do the same.

## ARTICLE 16 – GOVERNING LAW

- 16.01 GOVERNING LAW; VENUE:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.
- 16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION:** In the event that the County or the Developer commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Developer agree to waive the procedures for initial service

of process mandated by Chapters 48 and 83 of the Florida Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Developer agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Developer has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Developer, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statutes.

## ARTICLE 17 – TRUST AGREEMENT

- 17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE:** Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15<sup>th</sup> day of December, 2002, as amended from time to time, by and between the County and JPMorgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the “Trust Agreement”), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Developer at the offices of the Department during normal working hours.
- 17.02 ADJUSTMENT OF TERMS AND CONDITIONS:** If at any time during the Interim Term, Operational Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Developer or by other Developers under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County, shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Developer and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Developer.
- 17.03 INSPECTIONS:** The authorized employees and representatives of the County and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations and any storage/support spaces at all reasonable times for the purposes of

inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the county should it not make such inspection(s).

**17.04 INDEPENDENT PRIVATE SECTION INSPECTOR GENERAL REVIEW:**

Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of this Proposal, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Proposer shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Proposer's cost/price for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Proposer, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Proposer in connection with this RFP or any contract issued as a result of this Proposal. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Proposer or third party.

**17.05 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW:** According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Developer. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under \$1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. *Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.*

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

## ARTICLE 18 – OTHER PROVISIONS

- 18.01 PAYMENT OF TAXES:** The Developer shall pay all taxes lawfully assessed against its interests in the Locations and any support/storage spaces and its services hereunder, provided however, that the Developer shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 “Other Defaults”** hereof.
- 18.02 ALTERATIONS BY DEVELOPER:** The Developer shall not alter or modify the Locations and or any support/storage spaces, except in accordance with **Article 4 “Improvements to the Locations”** herein, without first obtaining written approval from the Department.
- 18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 18.04 ADMINISTRATIVE MODIFICATIONS:** It is understood and agreed to that the Department, upon written notice to the Developer, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.09 “Addition, Deletion and Modification of Locations”**, **Sub-Article 18.02 “Alterations by Developer”**, **Sub-Article, 21.02 “Right to Amend”**, and **Sub-Article 21.04 “Right to Modify”**.
- 18.05 SECURITY:** The Developer acknowledges and accepts full responsibility for the security and protection of the Locations. The Developer fully understands and acknowledges that any security measures deemed necessary by the Developer for protection of the Locations shall be the sole responsibility of the Developer and shall involve no cost to the Department.
- 18.06 RIGHTS OF DEPARTMENT AT AIRPORT:** The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Developer for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County, its employees, or agents.
- 18.07 OTHER DEPARTMENT RIGHTS:** The Developer shall be liable for any physical damage caused to the Locations by the Developer, its employees, agents, contractors, subcontractors, suppliers, or its Sub-tenants. The liability shall encompass: (i) the Developer’s repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Developer or its Sub-tenants and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.

**18.08 FEDERAL SUBORDINATION:** This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

**18.09 NOTICES:** Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:  
(Mailing Address)

Director  
Miami-Dade Aviation Department  
Post Office Box 592075  
Miami, Florida 33159-2075

or (physical address):

Miami International Airport  
Terminal Building  
Director's Office  
Concourse E-5<sup>th</sup> floor  
Miami, FL 33122

To the Developer:  
(Address Here)

with copies to:

(Address Here)

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

**18.10 SEVERABILITY:** If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.

- 18.11 RIGHTS RESERVED TO DEPARTMENT:** All rights not specifically granted the Developer by this Agreement are reserved to the Department.
- 18.12 COUNTY LIEN:** The County shall have a lien upon all personal property of the Developer in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.
- 18.13 AUTHORIZED USES ONLY:** The Developer shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Developer under this Agreement.
- 18.14 NO WAIVER:** There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Developer unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Developer.
- 18.15 AIRPORT SECURITY PROGRAM.** Developer agrees to observe all federal, state and local laws, rules and security requirements applicable to Developer's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations. Developer agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County or the Department, and to take such steps as may be necessary or directed by County or the Department to insure that employees, Sub-tenants, invitees and guests observe these requirements. If required by the Department, Developer shall conduct background checks of its employees in accordance with applicable federal, state or local laws. The Department shall have the right to require the removal or replacement of any employee of Developer or its Sub-tenant(s) at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Developer, its Sub-tenants, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Developer agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Developer further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Developer fails to remedy any such deficiency, County may do so at the cost and expense of Developer. Developer acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.
- 18.16 INTENT OF AGREEMENT:** This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

- 18.17 MODIFICATIONS:** This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04 "Administrative Modifications"**, **Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.
- 18.18 RADON DISCLOSURE:** In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."**
- 18.19 TRADEMARKS AND LICENSES:** The Department may, from time to time, require the Developer as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Developer and the Department, on behalf of the Department granting the Developer the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.
- 18.20 HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 18.21 BINDING EFFECT:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.
- 18.22 GOVERNMENTAL DEPARTMENT:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.
- 18.23 INDEPENDENT CONTRACTOR:** The Developer shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of

the Department. All personnel provided by the Developer in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Developer under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Developer represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Developer to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

- 18.24 OTHER LIENS:** Developer shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Developer or its Sub-tenants shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Developer or its Sub-tenants may in good faith contest any such lien if Developer provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Developer further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Developer shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Developer or its Sub-tenants or as a consequence of the existence of Developer's interest under this Lease.

#### ARTICLE 19 - SUB-LEASES

- 19.01 ASSIGNMENT OF SUB-LEASES BY DEPARTMENT:** In the event this Agreement is terminated prior to the completion of the Operational Term or Extension, the Department shall have the following rights and obligations regarding the Sub-tenant Agreements then in effect:
- (A) in case of termination without cause by the County or if the Developer terminates with cause, the County shall execute an agreement assigning to the County the Developer's right and duties under all Sub-Lease agreements then in effect (Assignment Agreement); and
  - (B) in cases of termination with cause by the County or if the Developer terminates without cause, refer to Sub-Article 12.07 "Termination for Abandonment", the County reserves the right to not execute an Assignment Agreement to assume those Sub-tenant agreements that fail to satisfy any of the following criteria:
    - (i) Sub-tenant is not currently in non-monetary default, beyond all applicable notice and cure periods;

- (ii) Sub-tenant has no outstanding uncured material defaults and no material defaults, cured or otherwise, within one (1) year before the proposed date of assignment;
- (iii) Sub-tenant has not had no more than three (3) accumulated defaults of any kind during the previous twelve (12) months under its Sub-Lease agreement;
- (iv) Sub-tenant is current regarding all payments of any kind for which it is responsible under its Sub-Lease agreement; and
- (v) Sub-tenant has no outstanding claims of default against the Developer in its capacity as landlord under the Sub-Lease agreement or has waived any such claims.

In addition to the foregoing, the County has no obligation to assume any Sub-tenant agreement (i) which does not conform to the requirements of this Agreement unless each non-conforming provision was explained to the Department and specifically approved prior to execution of the Sub-Lease or even if not approved, the non-conforming provisions are not adverse to the Department's interests, as determined in the judgment of the Department, or (ii) the Developer does not execute an Assignment Agreement which provides that the Developer remains liable for and indemnifies and holds harmless the County for any claims arising out of the performance of the Sub-Lease agreement up to the effective date of the Assignment Agreement.

**19.02 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES:** Developer shall not Sub-Lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Developer hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

**19.03 DEVELOPER'S SUB-LEASE AGREEMENT REQUIREMENTS:** The Developer's Sub-Lease agreement(s) must not extend beyond the Operational Term or, any Extension and must contain comparable terms and conditions, as may be applicable, to those contained herein.

Costs not directly related to a Location of a Sub-tenant shall not be imposed upon that Sub-tenant except for such costs required by the Department such as the marketing fee and/or common logistics fee.

**19.04 SUB-TENANT MINIMUM QUALIFICATIONS REQUIREMENT:** The Developer must ensure that each Sub-tenant has a minimum of three (3) years continuous experience within the last five (5) years in managing or operating and maintaining one or more retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of \$250,000 in gross sales per year per location.

## ARTICLE 20 - WAIVER OF CLAIMS

The Developer hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members

of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Developer hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Developer or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Developer's or its Sub-tenants' ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Developer hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

## **ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS**

**21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY:** This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

**21.02 RIGHT TO AMEND:** In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Developer hereby consents to any and all such modifications and changes as may be reasonably required.

### **21.03 DEVELOPER COVENANTS AND ASSURANCES:**

#### **A. Covenants Against Discrimination:**

1. Developer on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing of services in connection therewith, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Developer shall operate at the Airport in

compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Developer shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Developer authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Developer shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Developer shall furnish the original or a true copy of such agreement to Department.

2. Developer will provide and cause its Sub-tenants to provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Developer is in the exclusive possession of another who fails or refuses to furnish this information, Developer shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.
4. Developer assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Developer also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Developer further assures County that it and its Sub-tenants will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Developer also assures County that it will require its contractors and Sub-tenants to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Developer's services hereunder.
6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Developer agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.  
  
b) Developer agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Developer agrees that it will adopt such requirements as part of this Agreement.

**21.04 RIGHT TO MODIFY:** The parties hereto covenant and agree that, during the Interim Term, Operational Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Developer from contesting said rulings or opinions, but the Developer shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

**21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS:** The Developer agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Developer and delivery to the Department of an election not to claim depreciation or any investment credit

with respect to any portion of such capital expansion projects or any other portion of the Airport System.

**21.06 REMEDIES:** All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

**21.07 NOT USED.**

**21.08 REGULATIONS OF DEPARTMENT:** The rights and privileges granted to the Developer hereunder and the occupancy and use by the Developer and the Developer's Sub-tenants of the Locations shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

**21.09 INTEREST:** Any sums payable to the Department by the Developer under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

**21.10 MISCELLANEOUS PROVISIONS:** The Developer, its Sub-tenants and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Developer or to its services or operations hereunder.

1. The Developer shall, at its own cost and expense, procure and keep in force during the Interim Term, Operational Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Developer to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Developer's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Developer herein, on the Locations and on any and all equipment installed on the Locations and the Developer shall make and file all applications, reports, and returns required in connection therewith.
2. The Developer agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Developer or any of its Sub-tenants, officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
3. The Developer is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing

contained in this Agreement shall be deemed or construed by the County or the Developer or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Developer.

4. The County shall have the right during the Developer's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Developer located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.
5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
6. Time is expressed to be the essence of this Agreement.
7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.
8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained herein.
9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.
10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

**21.11 FORCE MAJEURE:** Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Developer, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

**21.12 ENTIRE AGREEMENT:** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Developer hereby affirms the completeness and accuracy of the information provided by Developer to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Developer to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

**DEVELOPER**

**ATTEST:**

Secretary \_\_\_\_\_  
(Signature and Seal)

\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
(Legal Name of Corporation)

By: \_\_\_\_\_  
Developer - Signature

Name: \_\_\_\_\_

\_\_\_\_\_  
(Type Name & Title)

**INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE**

\_\_\_\_\_  
Legal Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
Legal Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
(Type Name & Title)

Attest: \_\_\_\_\_

Name of Managing Joint Venturer:

\_\_\_\_\_

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Authorized Representative of  
the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

**BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

By: \_\_\_\_\_  
County Manager

Approved for Form  
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

\_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk

Resolution No.: \_\_\_\_\_

Date: \_\_\_\_\_

## MINIMUM QUALIFICATIONS PROPOSAL FORM

(To be filled out by Proposer)

Package No. \_\_\_\_\_

(Proposer shall clearly state on above line the Package Number for which the Proposer is presenting this Appendix A. Proposer shall submit an Appendix A for each Package separately.)

Proposer is a Developer \_\_\_\_\_; a Prime Concessionaire \_\_\_\_\_; a Direct Lessee \_\_\_\_\_;

All information requested in this Questionnaire Form must be furnished and submitted by Proposer. Statements must be complete, accurate, in the form requested, and must be signed before a notary public. Omission, inaccuracy or misstatement may be cause for rejection.

- 1) Name and address of Proposer exactly as it is to appears in the Proposal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2) Official contact or representative of Proposer for purpose of this Proposal:

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

Email address \_\_\_\_\_

- 3) Proposer, if selected, intends to carry on the business as:

( ) Individual ( ) Partnership ( ) Joint Venture

( ) Corporation ( ) New Entity ( ) Other

( ) If "Other" attach explanation.

( ) If "Corporation", is Proposer a subsidiary? Yes \_\_\_\_ No \_\_\_\_

If yes, Name and Address of parent corporation

\_\_\_\_\_

**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

4) **If a Partnership**, answer the following:

- a. Name, address, and share of each partner or member of Partnership:

Name	Address	Share
_____	_____	_____
_____	_____	_____
_____	_____	_____

- b. Date of Organization \_\_\_\_\_

- c. General or Limited Partnership (If applicable) \_\_\_\_\_

- d. Where Recorded \_\_\_\_\_

- e. Registered in Florida \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Date \_\_\_\_\_ If so, when \_\_\_\_\_

- f. Attach copy of (1) Partnership Agreement and (2) Certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

5) **If a Corporation**, answer the following:

- a. When incorporated \_\_\_\_\_

- b. In what state \_\_\_\_\_

- c. If foreign, date of registration with Florida Secretary of State \_\_\_\_\_

- d. Name, address, experience in the business and amount of stock held by the following officers:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Other: \_\_\_\_\_

- e. Name, address and shares of stock held by each Member of the Board of Directors:

Chairman \_\_\_\_\_

**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

Member \_\_\_\_\_

Member \_\_\_\_\_

Member \_\_\_\_\_

Member \_\_\_\_\_

Name, address and shares of stock held by other principal Stockholders:  
(A Principal Stockholder is defined as a stockholder who holds 10% or more of the outstanding stock of the corporation).

Total capitalization \$ \_\_\_\_\_.

Amount of capital stock subscribed \$ \_\_\_\_\_.

Amount paid in \$ \_\_\_\_\_.

- f. Attach copy (1) of corporate charter, (2) proof of registration with Florida Secretary of State, and (3) certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

6) **If Joint Venture**, complete the following:

- a. The Joint Venture Proposer, \_\_\_\_\_,  
Consists of the following entities:

- (i) \_\_\_\_\_, a \_\_\_\_\_ corporation,  
(Corporate Name) (State of Incorporation)  
authorized to do business in the State of Florida. The officers of the joint venturer are:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

- (ii) \_\_\_\_\_, a \_\_\_\_\_ corporation,  
(Corporate Name) (State of Incorporation)  
authorized to do business in the State of Florida. The officers of the joint venturer:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

Treasurer: \_\_\_\_\_

- b. The Managing or the General Partner of the Joint Venture, or other appropriate person legally authorized to bind the Joint Venture is:

\_\_\_\_\_, who is the \_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_, of \_\_\_\_\_  
(Name of joint venturer)

The Joint Venture, of whatever composition, must attach a copy of the Joint Venture Agreement.

Each corporate member of the Joint Venture must attach: (1) copy of corporate charter, (2) proof of registration with Florida Secretary of State, and (3) certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

7) **If New Entity (including newly formed Joint Ventures),** complete the following:

- a. The New Entity, \_\_\_\_\_,

Consists of the following entities:

- (i) \_\_\_\_\_, a \_\_\_\_\_ corporation,  
(Corporate Name) (State of Incorporation)

authorized to do business in the State of Florida. The officers of the new entity are:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

- (ii) \_\_\_\_\_, a \_\_\_\_\_ corporation,  
(Corporate Name) (State of Incorporation)

authorized to do business in the State of Florida. The officers of the new entity:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

Treasurer: \_\_\_\_\_

- b. The Managing or the Principal Member of the New Entity, or other appropriate person legally authorized to bind the New Entity is:

\_\_\_\_\_, who is the \_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_, of \_\_\_\_\_  
(Name of new entity principal)

The New Entity, of whatever composition, must attach a copy of the newly formed entity's Agreement.

Each corporate member of the New Entity must attach: (1) copy of corporate charter, (2) proof of registration with Florida Secretary of State, and (3) certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

8) Please provide the names and addresses of each of Proposer's officers, directors, shareholders, affiliates (as defined below), or other persons expected to make significant contributions to the business of Proposer (collectively referred to as "Principal" or Principals"). Describe accurately and completely their respective relationships with Proposer, including (without limitation) their ownership interests and their anticipated role in the management and operations of Proposer.

9) Please state whether any of the following events have occurred in the last ten (10) years with respect to Proposer or any Principal of Proposer. If any answer is yes, fully explain:

- (a) A petition under the federal bankruptcy laws or state insolvency laws was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for, the business or property of such person, or any partnership in which he or she was a general partner at or within two years before the time of such filing, or any corporation or business association in which he or she was an executive officer at or within two years before the time of such filing;
- (b) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations or other minor violations):
- (c) Such person was a subject of any order, judgment, or decree not subsequently reversed, suspended or vacated by any court of competent jurisdiction, permanently or temporarily enjoining such person from, engaging in any type of business practice, or otherwise eliminating a type of business practice; and
- (d) Such person has been the subject of any criminal or civil proceeding pertaining to concessions operations at any airport, or pertaining to any aspect of the aviation industry; if so, please fully explain.

**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

10) Please state whether the Proposer, any Principal of Proposer, any family, member of any Principal, or any person or entity with which such person has a business relationship, has or had within the last fifteen (15) years (i) directly or indirectly a business relationship with the Miami-Dade County (including Airport), (ii) directly or indirectly receives or received revenues from Miami-Dade County (including Airport) or (iii) directly or indirectly receives or received revenue from the result of conducting business on County property or pursuant to any contract with the County. Please describe any such relationship.

11) Please state whether Proposer, any Principal of Proposer or any of their family members has or had within the last fifteen (15) years, a direct or indirect business relationship with any elected or appointed County official or an affiliate or with any County employee or any affiliate, and fully describe such business relationship.

12) The Proposer understands that the information contained in this Qualifications Form and Exhibits is to be relied upon by the County in its considerations for awarding the Lease and Concession Agreement and such information is expressly warranted by the Proposer to be true and correct. The undersigned Proposer agrees to furnish upon request any additional information, prior to award of the Lease and Concession Agreement, as may be required by the County under the Proposal Documents.

The Proposer understands that the County has the right to verify the information submitted and to seek any additional information relating to the qualifications of the Proposer. The discovery of any misrepresentation, which, in the sole opinion of the County, materially affects the qualifications of the Proposer to perform under the Lease and Concession Agreement, shall be cause for the County to reject the Proposal of the Proposer and, if discovered after the award of the Lease and Concession Agreement, to cancel same without liability by the County to Concessionaire.

In executing this Proposal, the Proposer certifies it understands that Dade County reserves the right to reject any or all Proposers, to waive irregularities, and to re-advertise.

The undersigned hereby vouches for the truth and accuracy of all statements, answers and representations made in this questionnaire, including all supplementary statements hereto) attached. (Individual, co-partner, joint venturer, authorized officer of a corporation).

For purposes of this questionnaire "affiliate" means any person or entity which directly or indirectly or is controlled by, or is under common control with, a person. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

13) Minimum Qualifications: Proposers shall supply evidence that they meet the minimum qualifications established for this RFP as follows:

1. Proposer's Qualifications:

- a. Packages One and Two - Three (3) years continuous experience within the last five (5) years in each of the following capabilities: financing, designing and construction, leasing, managing, and maintaining multi-tenant retail locations in an airport, transportation

**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

center, retail shopping center or marketplace generating at least an aggregate of \$2 million in annual gross sales for such retail locations. Proposers who wish to operate and not sub-lease Locations within the package on which they are proposing must demonstrate three (3) years of continuous experience within the last five (5) years in operating those retail locations for Packages 2 and 3.

b. Packages Three through Eight - Three (3) years continuous experience within the last five (5) years in each of the following capabilities: financing, designing and construction, managing, operating and maintaining retail locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of \$500,000 in annual gross sales for such retail locations.

c. Must be authorized to do business in the State of Florida.

2. Sub-Tenant's Minimum Qualifications:

a. Three (3) years continuous experience within the past five (5) years in the managing or operating and maintaining one or more retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of \$250,000 in gross sales per year per location.

b. Must be authorized to do business in the State of Florida.

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**MINIMUM QUALIFICATIONS PROPOSAL FORM**

(To be filled out by Proposer)

PROPOSER(If individual, partnership or  
joint venture):PROPOSER (If Corporation):

Name: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_  
SignatureBy: \_\_\_\_\_  
President\_\_\_\_\_  
Print Name\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary\_\_\_\_\_  
Print Name

Witnesses to above signature:

\_\_\_\_\_  
Signature

(CORP. SEAL)

\_\_\_\_\_  
Print Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Print Name

Dated \_\_\_\_\_

Sworn to and subscribed before me

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public

My commission Expires on:

\_\_\_\_\_

(NOTARY SEAL)

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## PRICE MINIMUM ANNUAL GUARANTEE PROPOSAL FORM

Package No. \_\_\_\_\_

(Proposer shall clearly state on above line the Package Number for which the Proposer is presenting this Appendix B. Proposer shall submit an Appendix B for each Package separately.)

Proposer is a Developer \_\_\_\_\_; a Prime Concessionaire \_\_\_\_\_; a Direct Lessee \_\_\_\_\_;

Print Name of Proposer: \_\_\_\_\_

Print Name of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative of Proposer: \_\_\_\_\_

Date: \_\_\_\_\_

The financial component for the Retail Concession Program is based on the proposed Minimum Annual Guarantee ("MAG"). As consideration for the privilege to engage in business at Miami International Airport, Concessionaire shall pay the MAG to the Department, which is inclusive of Location and Location Storage Rent.

Rent is \$56.49 per square foot annually for the lease of the Locations in Exhibit A, Locations, and \$28.25 per square foot annually for the lease of Location Storage. Effective upon Beneficial Occupancy or 120 calendar days from the Turnover Date of each Location, Concessionaire shall pay the prorated MAG.

The Minimum Annual Guarantee shall be recalculated at the anniversary of the Effective Date. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities average: All Items, for the published, preceding twelve-month period.

MAG (U.S. Funds) \$ \_\_\_\_\_  
In numbersMAG (U.S. Funds) \$ \_\_\_\_\_  
In words

(In case of conflict between words and figures, the words will govern; provided, however, that if the words are obviously incorrect, the County shall have the right to accept the Price Proposal based on the figures. Additionally, the County shall have the right to correct obvious arithmetic errors.)

**Proposers cannot qualify, place conditions or additional terms on this Price MAG Proposal. Any Proposers who qualify or place conditions or additional terms with this price proposal may be found non responsive.**

The Proposer shall provide a breakdown of the MAG as follows:

Sq. Ft.\*

Location Rent \_\_\_\_\_ x \$56.49 = \_\_\_\_\_

Sq. Ft.\*

Location Storage \_\_\_\_\_ x \$28.25 = \_\_\_\_\_

**MAG - equal to or greater than Location and Location Storage Rent:**

\$ \_\_\_\_\_

\* The Proposer shall provide the breakdown of the Location square footage it will use for storage, taking into consideration that the square footage cannot exceed the total square footage for the Location and the Location Storage cannot exceed 20% of the total square footage of the Location.

**Proposers - do not include any Support Spaces/Storage as covered under Section 6, Sub-Articles 1.06 and 1.07 of the Lease and Concession Agreements which, if necessary will be handled separately.**

PROPOSER

(If individual, partnership or  
joint venture):

Name: \_\_\_\_\_

By: \_\_\_\_\_

Signature

Print Name

Title: \_\_\_\_\_

PROPOSER (If Corporation):

Name: \_\_\_\_\_

By: \_\_\_\_\_

President

Print Name

Attest: \_\_\_\_\_

Secretary

Print Name

Witnesses to above signature:

\_\_\_\_\_  
Signature\_\_\_\_\_  
Print Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Print Name

Dated \_\_\_\_\_

Sworn to and subscribed before me

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public

My commission Expires on:

\_\_\_\_\_

(NOTARY SEAL)

(CORP. SEAL)

## APPENDIX C

### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

#### I. DEFINITION:

*Airport Concession Disadvantaged Business Enterprise (ACDBE): means a concession that is a for-profit small business concern –*

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*Small business concern: means a for-profit business that does not exceed the size standards of 49 CFR Part 23 Section 23.33 for airport concession.*

*Socially and economically disadvantaged individual: means any individual who is a citizen (or lawfully admitted permanent resident) of the United States who is –*

- (1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (b) "Hispanic American," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (c) Native American," which includes persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians;
  - (d) "Asian-Pacific American," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, The U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands.

## **APPENDIX C**

### **AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION**

#### **II. ACDBE PARTICIPATION PLAN**

The ACDBE participation plan required to be submitted with the proposal by each Bidder/Proposer must contain at least the following:

- 1) A Schedule of Participation (ACDBE APPENDIX I) and Letter of Intent (ACDBE APPENDIX 2) by the Bidder/Proposer of the percentage of participation by an ACDBE Firm the Bidder/Proposer intends to have in this Agreement and how the Bidder/Proposer intends to achieve such stated participation.
- 2) Below is the documentation which will be required as part of the Bidder/Proposer's ACDBE Participation Plan for any one or combination of the following:
  - (a) If Bidder/Proposer intends to meet the ACDBE goal as an ACDBE itself the Bidder/Proposer shall submit:
    - 1) A Schedule of Participation (ACDBE APPENDIX I);
    - 2) Letter of Intent (ACDBE APPENDIX 2);
    - 3) ACDBE Certification or application for ACDBE Certification by the Department of Business Development (DBD) (Phone: (305) 375-3111);
    - 4) Explanation of participation by the ACDBE Firm in management and day-to-day operation; and,
    - 5) Financial participation by the ACDBE Firm Proposer in gross revenues from this agreement.
  - (b) If Bidder/Proposer intends to meet the ACDBE goal as a partnership or joint venture, the Bidder/Proposer must submit:
    - 1) A Schedule of Participation (ACDBE APPENDIX I);
    - 2) Letter of Intent (ACDBE APPENDIX 2);
    - 3) Partnership or joint venture agreement;
    - 4) An explanation of participation by the ACDBE participant in the management and to day-to-day operations (ACDBE APPENDIX 4);
    - 5) Financial participation by the ACDBE Firm to meet the ACDBE participation in gross revenues;
    - 6) ACDBE Certification or application for ACDBE Certification by the Department of Business Development (DBD) (Phone: (305) 375-3111); of the ACDBE joint venturer or partner; and,
    - 7) Experience of ACDBE joint venturer or partner must be listed on the experience sheet.
  - (c) If the Bidder/Proposer intends to meet the ACDBE goal through subcontracting, the Bidder/Proposer must submit:
    - 1) A Schedule of Participation (ACDBE APPENDIX I);
    - 2) Letter of Intent (ACDBE APPENDIX 2);
    - 3) A listing of those activities which the Proposer intends to subcontract and the estimated percentage of gross revenues such subcontracted services will represent of the gross revenues from all activities under the agreement that will be subcontracted;
    - 4) ACDBE Certification or application for ACDBE Certification by the Department of Business Development of such ACDBE firms; and,
    - 5) Experience of ACDBE subcontractors must be listed on the experience sheet.

## **APPENDIX C**

### **AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION**

MDC may request any other information as may be required to determine the listed ACDBE Firm's Qualifications. Agreements between a Bidder/Proposer and an ACDBE Firm in which the ACDBE firm promises not to provide quotations to other bidder/proposers is prohibited. The listing of an ACDBE Firm by a Bidder/Proposer as part of its Airport Concession Disadvantaged Business Enterprise Participation Plan shall constitute a representation by the Bidder/Proposer that such ACDBE Firm is Qualified and not Unavailable, and a commitment by Bidder/Proposer that if it is awarded this agreement, it will utilize such ACDBE firms listed for the portion of the contract and at the percentage of gross revenues set forth in its submission, subject to the terms of these Provisions.

#### **III. GOOD FAITH EFFORTS:**

The Bidder/Proposer shall make good faith efforts to achieve the established ACDBE participation goal. In the event that the Bidder/Proposer's ACDBE Participation Plan does not meet the established ACDBE participation goal, the Bidder/Proposer must submit with his proposal documentation to demonstrate all good faith efforts extended by the Bidder/Proposer in attempting to meet the stated ACDBE participation goal. The good faith efforts documentation is required to be submitted with the proposal and shall include, but not be limited to:

- a. A detailed statement of the efforts made to contact and negotiate with ACDBE Firms, including (i) the names, addresses and telephone numbers of ACDBE Firms who were contacted, (ii) a description of the information provided to ACDBE Firms regarding the proposal or portions of the work to be performed, and (iii) a detailed statement of the reasons why additional prospective agreements with ACDBE Firms, if needed to meet the stated goal, were not reached.
- b. A detailed statement of the efforts made to select portions of the work proposed to be performed by ACDBE Firms in order to increase the likelihood of achieving the stated goal.
- c. For each ACDBE Firm contacted but which the Bidder/Proposer considered to be not qualified, a detailed statement of the reasons for the Bidder/Proposer's conclusions.
- d. Attendance at pre-proposal meetings, if any, scheduled by the Bidder/Proposer to inform ACDBEs of participation opportunities under a given solicitation.
- e. Advertisement in general circulation media, trade association publications, and minority focus media for at least twenty (20) days before bidder/proposals are due. If the interval between MDC advertising and proposal due date is so short that (20) days are not available, then publication for a shorter reasonable time is acceptable.
- f. Efforts made to assist the ACDBE firms contacted that needed assistance in obtaining bonding or insurance required by the Bidder/Proposer or MDC.
- g. Written notification to ACDBEs that their interest in the contract is solicited.

## **APPENDIX C**

### **AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION**

Failure of the Bidder/Proposer to submit the evidence of ACDBE Participation and the good faith efforts if necessary, as set forth above, may render the proposal non-responsible.

#### **IV. INVESTIGATION AND RECOMMENDATION BY COMPLIANCE MONITOR**

In the event that the Bidder/Proposer has not met the stated ACDBE participation goal established for this agreement, the Compliance Monitor (Associate Aviation Director, Miami-Dade County Aviation Department) may require that the Bidder/Proposer meet with the Compliance Monitor at Miami-Dade County Aviation Department, Minority Affairs Division, Building 5A, 3<sup>rd</sup> Floor, Miami, Florida 33159, or such other place as the Compliance Monitor may designate. The purpose of this meeting shall be for the Compliance Monitor to determine, if necessary, whether the effort of the Bidder/Proposer to meet the stated goals is sufficient. At this meeting, the Bidder/Proposer shall have an opportunity to present information pertinent to its compliance with the applicable requirements.

The Compliance Monitor may require the Bidder/Proposer to produce such additional information, as the Compliance Monitor deems appropriate.

No later than (15) days after initial meeting with the Bidder/Proposer, the Compliance Monitor shall make a written recommendation to the Aviation Director or his designee (hereinafter referred to as "Director") which shall include a statement of the facts and reasons upon which the recommendation is based.

- a) **Determination by Miami-Dade County** – Following receipt of the Compliance Monitor's recommendation, the Director shall, at his discretion, request such further information from the Bidder/Proposer by providing a Notice of Opportunity to meet with the Contracting Officer or his designee and may rely upon any factual conclusion reported by the Compliance Monitor which is not contradicted by the Bidder/Proposer, relevant to the issues on which his recommendation to the Board will be based. As soon as practicable, the Director shall make a determination, in writing and setting forth the facts and reasons upon which it is based, whether the bid/proposal of such Bidder/Proposer complies with the requirements of the Part or recommending to the Board that the Contract/Agreement not be awarded to the Bidder/Proposer. A copy of such determination shall be sent to the Bidder/proposer. Such determination shall not affect the power of the Board of County Commissioners to reject a bid/proposal for any other reason or to take action on the recommendation of the Director, as it deems appropriate.

## **APPENDIX C**

### **AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION**

**Consideration of Other Bids** – If Miami-Dade County deems it advisable in the interest of expediting the award of the Contract, the procedures set forth in this Part may be carried out with respect to the bids/proposals of one or more additional Bidders/Proposers at the same or different times with each such proceeding to be separately conducted.

- c) **Failure of Bidder/Proposer to Participate** – The Bidder/Proposer will be bound by proceedings under this part to which it has given required notice without regard to its participation or lack of participation in them. Its lack of participation, upon receiving notices and requests pursuant to this Part, shall not be grounds for reconsideration of any actions taken in the proceedings under this Part.

#### **V. SUBSTITUTION OF ACDBE FIRMS FOR THOSE LISTED ON THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION PRIOR TO CONTRACT AWARD**

A Bidder/Proposer may not change information required by these Provisions from that provided in its Disadvantaged Business Participation Plan unless authorized to do so by the Director, or his designee, in writing. Such written authorization may be given upon a receipt of written request from the Proposer outlining the reason the request for change is being submitted specific details of the requested change and impact of the requested change on the ACDBE Participation as originally submitted. Failure on the part of the Bidder/Proposer to comply with all of the requirement of these Provisions shall be grounds for the recommendation of the Director to the Board of County Commissioners that the Contract not be awarded to the Bidder/Proposer.

#### **VI. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD**

- A. **Airport Concession Disadvantaged Business Enterprise Participation Plan.** The Proposer shall contract with those ACDBE firms listed on the Bidder/Proposer's Airport Concession Disadvantaged Business Enterprise Participation Plan, and shall thereafter neither terminate such ACDBE Firms nor reduce the scope of the work to be performed by, or decrease the percentage of participation by the ACDBE Firm(s) there under without the prior written authorization of the Director.
- B. **Substitution of ACDBE Firms**
1. Excuse from entering in agreements with ACDBE Firms. If prior to execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director and demonstrates to the satisfaction of the Director that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of award of the Contract, an ACDBE Firm which is to enter into such agreement has become not qualified, or that the ACDBE Firm has unreasonable refused to execute the agreement, the successful Bidder/Proposer shall be excused from executing such agreement.

## APPENDIX C

### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

2. Rightful Termination of agreements entered into with ACDBE firms. If after execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director and demonstrates to the satisfaction of the Director that, as a result of a change in circumstance beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of execution of such agreement, an ACDBE Firm which entered into such agreement has become not qualified or has committed and failed to remedy a material breach of the agreement, the Bidder/Proposer shall be entitled to exercise such rights as may be available to it to terminate the agreement.
  3. Determination of Excuse of Rightful Termination. If the Bidder/Proposer at any time submits a written request under these Provisions to the Director, as soon as practicable, shall determine whether the Bidder/Proposer has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Bidder/Proposer an opportunity to present pertinent information and arguments.
  4. Alternative ACDBE Firm Participation Agreements. If the Bidder/Proposer is excused from entering or rightfully terminates an agreement with an ACDBE firm listed as part of the Bidder/Proposer's ACDBE Participation Plan, the Bidder/Proposer shall make every reasonable effort to enter into an alternative agreement for at least ACDBE Participation percentage as originally submitted as part of their proposal for this contract with another certified ACDBE firm. The Bidder/Proposer shall be deemed to have satisfied the requirements of this section if:
    - a. It shall enter each such alternative agreement(s) for at least the ACDBE participation as originally proposed.
    - b. It demonstrates to the satisfaction of the Director that it has made every reasonable efforts to negotiate with an ACDBE Firm in an attempt to enter into an agreement, but that it was unable to enter into such agreement because the ACDBE Firms were (i) not qualified; (ii) Unavailable; or (iii) although Qualified and not Unavailable, was unwilling or unable to reach an agreement.
    - c. Any situation covered by this section arises; the Compliance Monitor shall promptly meet with the Bidder/Proposer and provide him an opportunity to demonstrate compliance with these Provisions.
- VII. **Continued compliance** - MDC shall monitor the compliance of the Bidder/Proposer with the requirements of this Plan during the term of the contract. MDC shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with these. Provisions including, but not limited to, manpower tables, records for expenditures, observations at the job site, and contracts between the Bidder/Proposer and his subcontractors, suppliers, etc., entered into during the life of the Contract.

## APPENDIX C

### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

**VIII. Sanctions for violations** - If at any time MDC has reason to believe that the Bidder/Proposer is in violation of its obligation under these Provisions, or has otherwise failed to comply with these Provisions, MDC may, in addition to pursuing any other available legal remedy, commence proceeding to impose sanctions which may include, but are not limited to, one or more of the following:

1. The suspension of any payment or part thereof due the ACDBE Subtenant, Joint Venture Partner or Subcontractor from the Bidder/Proposer until such time as the issues concerning the Proposers Compliance are resolved.
2. The termination or cancellation of the Contract in whole or in part, unless the Bidder/Proposer demonstrates within a reasonable time its compliance with the terms of these Provisions.
3. The denial to the Bidder/Proposer of the right to participate in any further contracts awarded by MDC for a period of not longer than three years. No such sanction shall be imposed by MDC upon the Bidder/Proposer except pursuant to a hearing conducted by the Compliance Monitor and/or Director.

**ACDBE Reporting Requirements** – The Bidder/Proposer shall submit a Notarized Miami-Dade Aviation Department Concession Monthly Utilization Report (Attached) as required for Contracts in which an ACDBE Goal has been set. In addition, each Joint Venture partner must submit a Notarized Monthly Report of ACDBE Joint Venture Activity (ACDBE Appendix 4 form) providing documentation on the achievement of the ACDBE Joint Venture partner to the Minority Affairs Division.



**LETTER OF INTENT  
AIRPORT CONCESSION DISADVANTAGED BUSINESS  
ENTERPRISE PARTICIPATION**

To: \_\_\_\_\_

Project: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Total % of Bidder/Proposal: \_\_\_\_\_

The undersigned holds ACDBD Certificate No. \_\_\_\_\_ expiring on, \_\_\_\_\_ 20\_\_\_\_.

The undersigned intends to perform the following work in connection with the above Bid/  
Proposal (Describe): \_\_\_\_\_

Description of Services	% of Bid/Proposal
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Total% \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

ACDBE Firm \_\_\_\_\_

ACDBE APPENDIX 2

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# AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

ACDBE NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
_____	_____	_____	_____

(A)

(B)

(C)

NOTES:  
 USE A SEPARATE SHEET FOR EACH DBE COMPANY.  
 ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

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## CERTIFICATE OF UNAVAILABILITY

I, \_\_\_\_\_, \_\_\_\_\_  
Title

of \_\_\_\_\_ certify that on \_\_\_\_\_  
Date

I contacted the \_\_\_\_\_ to obtain a Bid/Proposal.  
Airport Concession Disadvantaged Business Enterprise

Description of Services:

---

---

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---

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

I, \_\_\_\_\_, was offered the above opportunity to Bid/Propose.  
ACDBE NAME

I was unavailable to provide the services at the above specified time due to:

---

---

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
ACDBD Certificate No.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Expires

\_\_\_\_\_  
Title

ACDBE APPENDIX 3

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**Joint Venture Partner:**

Reporting Month:

Function	Date Performed	Location	# of Hours Per Employee	# of Hours Extended	Attach Support Documentation	JV Partner Signature
		Total				

**I attest that the above information is accurate and complete.**

**For Joint Venture Partner (ACDBE), Please Print and Sign**

Date

For Joint Venture (Prime), Please Print and Sign

Date

Sworn before me: \_\_\_\_\_  
This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public:

Additional page(s) may be used if needed.

YTD ACDBF Goal:

Required \_\_\_\_\_  
Actual \_\_\_\_\_

---

€



69

69

\_\_\_\_\_

( )  
Telephone

File Name: MUR.AT Revised 9/16/05

## APPENDIX D

### RETAIL CONCESSION PROGRAM REQUEST FOR PROPOSAL ACKNOWLEDGEMENT OF ADDENDA

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**RFQ TITLE:** Retail Concession RFP

**RFP NO.** MDAD-01-04

---

**Directions:** Complete Part I or Part II, Whichever Applies

---

**Part I:** Listed below are the dates of issue for each addendum received in connection with this RFP:

---

Addendum # 1 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 2 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 3 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 4 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 5 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 6 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 7 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 8 Date \_\_\_\_\_, 200\_\_\_\_\_

Addendum # 9 Date \_\_\_\_\_, 200\_\_\_\_\_

---

**Part II** \_\_\_\_\_ No Addendum was received in connection with this RFP

---

\_\_\_\_\_ Date

---

**Proposer (Name)** \_\_\_\_\_

---

**Proposer (Signature)** \_\_\_\_\_

---

**APPENDIX E**  
**REQUEST FOR PROPOSAL**  
**RETAIL CONCESSION PROGRAM**  
**PROPOSAL BOND GUARANTY**

---

State of \_\_\_\_\_, County of \_\_\_\_\_

We, \_\_\_\_\_ as Principal  
and \_\_\_\_\_ as Surety, are  
held and firmly bound unto Miami-Dade County, Florida hereinafter called the County, in the **Penal sum**  
of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful  
money of the United States, for the payment of which sum well and truly to be made, we bind ourselves,  
our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.  
The Principal has submitted the attached Proposal, dated \_\_\_\_\_, 20\_\_, for a **Retail Concession  
Program, RFP No. MDAD- 05- 05**. The Principal shall at time of Proposal opening furnish all  
documents and information required by the RFP Documents, and shall within the time stipulated in the  
Instructions to Proposers execute and deliver to the County, the Contract, the Performance Bond, Payment  
Bond and satisfactory evidence of all required Insurance. The Principal shall give a Performance Bond  
and a Payment Bond with good and sufficient surety, as required by the RFP Documents, for the faithful  
performance and proper fulfillment of such Contract and for the prompt payment of all persons furnishing  
labor or materials in connection therewith. Having met these obligations shall render this Bond void and  
of no effect; or in the event of withdrawal of said Proposal within the period specified, or in the event of  
the failure to comply with the RFP Documents, or in the event of failure to enter into such Contract and  
give such Bonds and evidence of insurance within the time specified, if the Principal shall pay the County  
the difference between the amounts specified in said Proposal and the amount for which the County may  
procure the required services and supplies, provided the latter amount be in excess of the former, then the  
above obligations shall be void and of no effect; otherwise, to remain in full force and virtue.

IN WITNESS WHEREOF, the above bound parties have caused this Proposal Bond to be executed by their appropriate officials as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**WITNESSES**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRINCIPAL (If Corporation)**

\_\_\_\_\_  
(Corporate Name)

\_\_\_\_\_  
President

Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

(CORPORATE SEAL)

**PRINCIPAL (If Partnership or Corporate Joint Venture)**

**(A) PARTNERSHIP OR CORPORATE  
JOINT VENTURER:**

\_\_\_\_\_  
Name of Joint Venture

By: \_\_\_\_\_  
President

Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

(CORPORATE SEAL)

**COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:**

\_\_\_\_\_  
(Copy of Agent's current Identification  
Card as issued by State of Florida Insurance  
Commissioner must be attached)

**(A) PARTNERSHIP OR CORPORATE  
JOINT VENTURER:**

\_\_\_\_\_  
Name of Joint Venture

By: \_\_\_\_\_  
President

Print Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

(CORPORATE SEAL)

**SURETY:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

**APPENDIX F**

**AFFIDAVIT OF MIAMI-DADE COUNTY  
LOBBYIST REGISTRATION  
FOR ORAL PRESENTATION**

**AFFIDAVIT OF MIAMI-DADE COUNTY  
LOBBYIST REGISTRATION FOR ORAL PRESENTATION  
APPENDIX F**

(1) Project Title: \_\_\_\_\_ Project No.: \_\_\_\_\_  
(2) Department: \_\_\_\_\_  
(3) Firm/Proposer's Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Business Telephone: (\_\_\_\_) \_\_\_\_\_

(4) List All Members of the Presentation team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are registered and the registration fee is not required for the Oral Presentation ONLY. Respondents are advised that any individual substituted for or added to the presentation team after submittal of the proposal and filing by staff, MUST register with the Clerk of the Board and pay all applicable fees.

Other than for the oral presentation, Respondents who wish to address the county commission, a county board or county committee concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: \_\_\_\_\_  
Title: \_\_\_\_\_  
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, who is personally known \_\_\_\_\_ (Individual, Officer, Partner or Agent) \_\_\_\_\_ (Sole Proprietor, Corporation or Partnership) to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

\_\_\_\_\_  
(Signature of person taking acknowledgement)

\_\_\_\_\_  
(Name of Acknowledger typed, printed or stamped)

\_\_\_\_\_  
(Title or Rank)      \_\_\_\_\_  
(Serial Number, if any)

## **APPENDIX G**

### **RETAIL CONCESSION PROGRAM MIAMI INTERNATIONAL AIRPORT PASSENGER TRAFFIC BY CONCOURSE**

Miami-Dade County Aviation Department  
 Miami International Airport  
 Passenger Traffic by Concourse - Unaudited

APPENDIX G

FY 03-04 (October 2003 to September 2004)

Concourse	Domestic Arrival	Domestic Departure	Int'l. Arrival	Int'l. Departure	Total Arrival	Total E/P'S	Total Pax
Total North	4,086,866	3,845,742	3,870,712	3,718,497	7,957,578	7,564,239	15,521,817
Total South	1,231,412	1,213,312	107,532	109,005	1,338,944	1,322,317	2,661,261
Total North and South	5,318,278	5,059,054	3,978,244	3,827,502	9,296,522	8,886,556	18,183,078

FY 02-03 (October 2002 to September 2003)

Concourse	Domestic Arrival	Domestic Departure	Int'l. Arrival	Int'l. Departure	Total Arrival	Total E/P'S	Total Pax
Total North	3,349,941	3,088,519	3,262,413	3,585,060	6,612,354	6,673,579	13,285,933
Total South	1,316,365	1,294,886	132,416	136,761	1,448,781	1,431,647	2,880,428
Total North and South	4,666,306	4,383,405	3,394,829	3,721,821	8,061,135	8,105,226	16,166,361

## **APPENDIX H**

### **RETAIL CONCESSION PROGRAM MIAMI INTERNATIONAL AIRPORT J.F. Brown Passenger Forecast**

APPENDIX H

MIAMI INTERNATIONAL AIRPORT  
JOHN F. BROWN FORECAST  
FY 2003, FY 2004, FY 2005  
in thousands

	FY		FY		FY2003				FY2004				FY2005		
	2000*	2001*	2002*	FY	Qtr.1	Qtr.2	Qtr.3	Qtr.4	Year	Qtr.1	Qtr.2	Qtr.3		Qtr.4	Year
Combined: Domestic and International	16,832	16,524	14,674		3,663	3,799	3,576	3,564	14,601	3,579	3,983	3,810	3,866	15,238	15,909
Domestic Enplanements	8,834	8,569	7,616		1,875	2,109	1,961	1,792	7,737	1,864	2,200	2,096	1,912	8,072	8,363
Domestic O&D (all trip lengths)	4,750	4,450	4,090		1,050	1,138	1,029	910	4,127	1,057	1,181	1,088	945	4,271	4,369
Domestic bound for Int.Dest'ns.	459	412	300		75	88	83	85	331	79	96	92	93	360	388
Dom-Dom Connections	1,130	1,034	829		221	250	221	171	863	215	256	230	176	877	911
Gateway Connections (Intl-Dom)	2,280	2,164	1,912		480	491	482	493	1,946	470	522	532	542	2,066	2,184
Other (charter & non-revenue)	215	508	485		50	142	146	133	471	42	145	154	156	497	510
International Enplanements	7,998	7,955	7,058		1,788	1,690	1,615	1,772	6,865	1,715	1,783	1,714	1,954	7,166	7,546
International O&D	4,747	4,536	4,057		1,037	954	883	986	3,861	966	998	927	1,080	3,971	4,203
Latin & Caribbean	3,406	3,270	2,970		765	711	654	730	2,860	720	734	675	787	2,916	3,067
Mexico	332	322	266		65	63	59	68	255	62	65	62	72	261	275
Central America	557	555	579		150	145	131	134	560	143	153	136	143	575	607
South America	1,429	1,392	1,176		305	273	248	299	1,125	283	278	253	324	1,138	1,191
Caribbean	1,087	1,001	949		245	229	216	228	918	231	238	224	248	941	993
Canada	215	208	168		41	42	38	45	166	41	43	39	49	172	180
Trans-Atlantic	1,126	1,057	919		231	202	191	211	835	206	221	213	244	884	956
Intl-Intl Connections	1,137	1,410	1,208		304	286	276	329	1,195	302	301	294	359	1,256	1,314
Gateway Connections (Dom-Intl)	2,114	2,010	1,793		447	450	456	456	1,809	446	484	493	515	1,938	2,029

Note: \* Actual

Forecast as of May 2003

**APPENDIX I**  
**LOCAL BUSINESS PREFERENCE**

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. A local business, for the purposes of receiving the aforementioned preference above, shall be defined as a Proposer which meets all of the following.

1. Proposer has a valid occupational license, issued by Miami-Dade County or Broward County at least one year prior to proposal submission due date to do business within Miami-Dade County or Broward County that authorizes the business to provide the goods, services or construction to be purchased.

**Proposer shall attach hereto a copy of said occupational license(s). (Note: Current and past year licenses shall be submitted as proof that Proposer has had the license at least one year prior to the proposal submission due date.)**

2. Proposer has a physical business address located within the limits of Miami-Dade County or Broward County from which the Proposer operates or performs business. (Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address.)

**Proposer shall state its Miami-Dade County or Broward County physical business address \_\_\_\_\_ and shall submit proof of occupancy for this address. If Proposer is leasing space from another company, a copy of the lease or an affidavit from the lessor must be submitted.**

3. Proposer contributes to the economic development and well-being of Miami-Dade County or Broward County in a verifiable and measurable way. This may include but not be limited to the retention and expansion of employment opportunities and the support and increase in the County's tax base. To satisfy this requirement, the Proposer shall affirm in writing its compliance with any of the following objective criteria as of the proposal submission due date:

Check box, if applicable:

- a. ☐ Proposer has at least ten (10) permanent full time employees, or part time employees equivalent to 10 FTE ("full-time equivalent" employees working 40 hours per week) that live in Miami-Dade County or Broward County, or at least 25% of its employees that live in Miami-Dade County or Broward County. **Proposer shall provide Internal Revenue Service Forms 941 for a one year period or other supporting documentation.**
- b. ☐ Proposer contributes to Miami-Dade County's or Broward County's tax base by paying either real property taxes or tangible personal property taxes to Miami-Dade County or Broward County. **Proposer shall provide real property tax receipts or tangible personal property tax returns.**
- c. ☐ Proposer contributes to the economic development and well-being of Miami-Dade County or Broward County by some other verifiable and measurable contribution by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposer shall check the box if applicable. If checking item "c" above, Proposer shall provide a written statement defining how Proposer meets that criteria and provide supporting documentation.

By signing below, Proposer affirms that it meets the above criteria to qualify for Local Preference and has submitted the requested documents.

In addition, to the above, the Proposer shall also list the total number of employees that are Miami-Dade County and Broward County residents. The number of employees submitted is to be accurate as of the proposal submission due date.

\_\_\_\_\_employees

**Note: At this time, there is an interlocal agreement in effect between Miami-Dade and Broward Counties until September 30, 2006. Therefore, a Proposer which meets the requirements of (1) (2) and (3) above for Broward County shall be considered a local business for the purposes outlined herein.**

Name of Firm: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_)\_\_\_\_\_ Fax: (\_\_\_\_)\_\_\_\_\_

hereby certify that to the best of my knowledge and belief all the foregoing facts are true and correct.

Signature of Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

SUBSCRIBED AND SWORN TO (or affirmed) before me on \_\_\_\_\_,  
(Date)

by \_\_\_\_\_, He/She is personally known to me or has  
(Affiant)

presented \_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Serial Number)

\_\_\_\_\_  
(Print or Stamp Name of Notary)

\_\_\_\_\_  
(Expiration Date)

Notary Public \_\_\_\_\_  
(State)

Notary Seal

**APPENDIX J**

**MIAMI-DADE COUNTY**  
**MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION AFFIDAVITS**

This sworn statement is submitted for:

PROJECT TITLE \_\_\_\_\_

PROJECT NUMBER \_\_\_\_\_

COUNTY OF \_\_\_\_\_

STATE OF \_\_\_\_\_

Before me the undersigned authority appeared \_\_\_\_\_ (Print Name),  
who is personally known to me or who has provided as identification and who  
(did or did not) take an oath, and who stated:

That he/she is the duly authorized representative of

\_\_\_\_\_  
(Name of Entity)

\_\_\_\_\_  
(Address of Entity)

\_\_\_\_/\_\_\_\_-\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/  
Federal Employment Identification Number

hereinafter referred to as the contracting Entity being its

\_\_\_\_\_  
(Sole Proprietor)(Partner)(President or Other Authorized Officer)

and as such has full authority to make these affidavits and say as follows.

**PUBLIC ENTITY CRIMES**  
**SWORN STATEMENT UNDER SECTION 287.133(3)(a),**  
**FLORIDA STATUTES**

1. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), **Florida Statutes**, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

2. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), **Florida Statutes**, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

3. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), **Florida Statutes**, means:

1. A predecessor or successor of a person convicted of a public entity crime:  
or
2. An entity under the control of any natural person who is active in the management of the Entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

4. I understand that a "person" as defined in Paragraph 287.133(1)(e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.

5. The statement which is marked below is true in relation to the Entity submitting this sworn statement. **[Please indicate which statement applies.]**

**PUBLIC ENTITY CRIMES  
SWORN STATEMENT UNDER SECTION 287.133(3)(a),  
FLORIDA STATUTES (Cont'd)**

\_\_\_\_\_ Neither the Entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Entity, nor any affiliate of the Entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The Entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Entity, or an affiliate of the Entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. **[Please indicate which additional statement applies.]**

\_\_\_\_\_ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. **[Please attach a copy of the final order.]**

\_\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. **[Please attach a copy of the final order.]**

\_\_\_\_\_ The person or affiliate has been placed on the convicted vendor list. **[Please describe any action taken by or pending with the Florida Department of General Services.]**

\_\_\_\_\_ The person or affiliate has not been placed on the convicted vendor list.

---

**DEBARMENT DISCLOSURE AFFIDAVIT  
PURSUANT TO SECTIONS 10-38 AND 2-8.4.1  
OF THE MIAMI-DADE COUNTY CODE**

Section 10-38 of the Code **relates to the debarment of any individual or other legal entity from County work. The Debarment Disclosure Affidavit** requires the Entity to affirm, under oath, that neither the entity, its officers, principals, directors, shareholders owning or controlling more than ten percent (10%) or more of the stock, partners, affiliates, as defined in the Code, nor its

subcontractors/subconsultants,, have been debarred by the County. Any individual or entity listed above that has been debarred by the County is prohibited from entering into any contract with the County during the period for which they have been debarred. Debarment may also constitute grounds for termination of any existing County contract. It is the entity's responsibility to ascertain this information before submitting the Qualification Statement.

\_\_\_\_\_ The Entity affirms under oath that neither the Entity, its officers, principals, directors, stockholders, or affiliates, nor its Subcontractor/ Subconsultant have been debarred by the County.

---

**CRIMINAL RECORD AFFIDAVIT  
PURSUANT TO SECTION 2-8.6 OF THE  
MIAMI-DADE COUNTY CODE**

Pursuant to Section 2-8.6 of the Code, the Entity must disclose, at the time the submission, if the Entity or any of its officers, directors, or executives have been convicted of a felony during the past (10) years. Failure to disclose such conviction may result in the debarment of the Entity who knowingly fails to make the required disclosure or to falsify information.

Indicate below if the above named entity, as of the date of submission:

\_\_\_\_\_ has not been convicted of a felony during the past ten (10) years, nor does it, as of the date of submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years.

\_\_\_\_\_ has been convicted of a felony during the past ten (10) years, or as of the date of submission, has an officer, director or executive who has been convicted of a felony during the past ten (10) years.

---

**DISCLOSURE OF OWNERSHIP AFFIDAVIT  
PURSUANT TO SECTION 2-8.1  
OF THE MIAMI-DADE COUNTY CODE**

I hereby declare that the information given herein and in the documents attached hereto are true and correct.

**PART I**

1. The full legal name and business address\* of the person or entity transacting business with the County is:

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2. If the transaction is with a Corporation\*\*, provide the full legal name and business address\* and title for each officer. This disclosure requirement does not apply to publicly traded corporations.

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3. If the transaction is with a Corporation\*\*, provide the full legal name and business address\* for each director. This disclosure requirement does not apply to publicly traded corporations.

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4. If the transaction is with a Corporation\*\*, provide the full legal name and business address\* for each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock and state the percentage. This disclosure requirement does not apply to publicly traded corporations.

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5. If the transaction is with a Partnership or joint venture, provide the full legal name and address for each partner or joint venture member.

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6. If the transaction is with a Trust, provide the full legal name and address for each trustee and each beneficiary.

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7. The full legal name and business addresses\* of any other individuals (other than stockholders owning less than five percent (5%) of the stock, subcontractors, materialmen, suppliers, laborers, or lenders) who have, or will have, any interest (legal, equitable, beneficial or otherwise) in the transaction with the County are:

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**CONTRACTOR'S DISCLOSURE AFFIDAVIT FOR MIAMI-DADE COUNTY**  
**PART II**  
**EMPLOYMENT DISCLOSURE**

1. Does your firm have a collective bargaining agreement with its employees?

☐ Yes ☐ No

2. Does your firm provide paid health care benefits for its employees?

☐ Yes ☐ No

3. Provide a current breakdown (number of persons) of your firm's work force and ownership as to race, national origin and gender:

White:	_____	Males	_____	Females
Asian:	_____	Males	_____	Females
Black:	_____	Males	_____	Females
Native American:	_____	Males	_____	Females
Hispanics:	_____	Males	_____	Females
Alaskan Natives:	_____	Males	_____	Females
_____:	_____	Males	_____	Females
_____:	_____	Males	_____	Females

(ADD EXTRA SHEETS IF NEEDED)

\* **Post Office Box addresses not acceptable.**

\*\* **If a Joint Venture, list this information for each member of the Joint Venture**

**DISCLOSURE OF OWNERSHIP AFFIDAVIT  
PART II**

**LIST ALL CONTRACTS IN EFFECT WITH MIAMI-DADE COUNTY DURING  
THE LAST FIVE (5) YEARS:**

<b>CONTRACT DATE</b>	<b>DOLLAR AMOUNT OF ORIG.CONTRACT</b>	<b>FINAL AMT. OF CONTRACT</b>	<b>PERCENTAGE DIFFERENTIAL</b>
=====			

(1)

_____	\$ _____	\$ _____	_____ %
Name of Dept. & Summary of Services Performed	_____ _____ _____		
Litigation Arising out of Contract	_____ _____ _____		

=====

(2)

_____	\$ _____	\$ _____	_____ %
Name of Dept. & Summary of Services Performed	_____ _____ _____		
Litigation Arising out of Contract	_____ _____ _____		

**DISCLOSURE OF OWNERSHIP AFFIDAVIT**  
**PART II (Cont'd)**

CONTRACT DATE	DOLLAR AMOUNT OF ORIG.CONTRACT	FINAL AMT. OF CONTRACT	PERCENTAGE DIFFERENTIAL
=====			

(3)

	\$ <u>                    </u>	\$ <u>                    </u>	_____ %
--	--------------------------------	--------------------------------	---------

Name of Dept.  
& Summary  
of Services  
Performed

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Litigation  
Arising out  
of Contract

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

=====

(4)

	\$ <u>                    </u>	\$ <u>                    </u>	_____ %
--	--------------------------------	--------------------------------	---------

Name of Dept.

\_\_\_\_\_

& Summary  
of Services  
Performed

\_\_\_\_\_  
\_\_\_\_\_

Litigation  
Arising out  
of Contract

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

=====

(ADD EXTRA SHEET(S) IF NEEDED.)

**DISCLOSURE OF OWNERSHIP AFFIDAVIT  
PART III**

A. How long has Entity been in business? \_\_\_\_\_

B. 1. Has the Entity ever done business  
under another name or with another  
firm? \_\_\_\_\_

If yes, attach separate sheet(s)  
listing same information as in parts  
I, II and III of this affidavit.

2. Have the principals of the Entity  
ever done business under another name  
or with another firm? \_\_\_\_\_

If yes, attach separate sheet(s)  
Listing same information as in Parts  
I, II and III of this affidavit.

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**AFFIRMATIVE ACTION PLAN/PROCUREMENT  
POLICY AFFIDAVIT PURSUANT TO SECTION 2-8.1.5  
OF THE MIAMI-DADE COUNTY CODE**

I, being duly first sworn, hereby state that the Respondent for this contract:

- ☐ has a current Affirmative Action Plan and Procurement Policy, as required by Section 2-8.1.5 of the Code , processed and approved for filing with the Miami-Dade County Department of Business Development (DBD) under the file No. \_\_\_\_\_ and the expiration date of \_\_\_\_\_.
- ☐ had annual gross revenues in excess of \$5,000,000 for the previous year and does not have a current Affirmative Action Plan and Procurement Policy as required by Section 2-8.1.5 of the Code, processed and approved for filing with the County DBD. I will contact DBD at 305-375-3111 regarding this condition of award requirement.
- ☐ had annual gross revenues less than \$5,000,000.00 for the previous year; therefore Section 2-8.1.5 of the Code is not applicable.
- ☐ has a Board of Directors which is representative of the population make-up of the nation and are exempt from the requirements of Section 2-8.1.5 of the Code. I will contact DBD at 305-375-3111 in order to submit the required exemption request.

**This single execution affidavits shall have the same force and effect as if each of the above affidavits had been individually executed.**

\_\_\_\_\_  
(Signature of Authorized Representative)

Title \_\_\_\_\_

Date \_\_\_\_\_

STATE OF:

COUNTY OF:

| The above affidavits were acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_,

by \_\_\_\_\_,  
(Authorized Representative)

of \_\_\_\_\_  
(Name of Corporation, Partnership, etc.)

who is personally known to me or has produced as identification and who did/did not take an oath.

\_\_\_\_\_  
(Signature of Notary)

Notary Stamp or Seal:

\_\_\_\_\_  
(Print Name)

Notary Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**APPENDIX J**  
**MIAMI-DADE COUNTY**  
**MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION**  
**CONDITION OF AWARD REQUIREMENTS**

The following pages are provided for the Respondent's convenience and are a prerequisite to a contract award:

- Single Execution Condition of Award Affidavits:
  - Disability Nondiscrimination
  - Family Leave
  - Domestic Leave
  - Currently Due Fees and Taxes
  - Drug Free Work Place
  - Current In County Obligations
  - Code of Business Ethics
- Subcontractor/Supplier Listing
- Subcontracting Policies Statement  
**(Also required, but no format (insert page is provided))**
- Proof of Authorization to do Business  
(Attach a copy of the Certificate of Status or Authorization per 607.0128 F.S., and certificate evidencing compliance with the Florida Fictitious Name Statute per 865.09 F.S., if applicable.)  
**(Also required, but no format (insert page is provided))**

**MIAMI-DADE COUNTY**

**MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION CONDITION OF  
AWARD AFFIDAVITS**

This sworn statement is submitted for:

PROJECT TITLE \_\_\_\_\_

PROJECT NUMBER \_\_\_\_\_

COUNTY OF \_\_\_\_\_

STATE OF \_\_\_\_\_

Before me the undersigned authority appeared \_\_\_\_\_ (Print Name),  
who is personally known to me or who has provided \_\_\_\_\_ as  
identification and who (did or did not) take an oath, and who stated:

That he/she is the duly authorized representative of

\_\_\_\_\_  
(Name of Entity)

\_\_\_\_\_  
(Address of Entity)

\_\_\_\_/\_\_\_\_-\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_/  
Federal Employment Identification Number

hereinafter referred to as the contracting entity being its

\_\_\_\_\_  
(Sole Proprietor)(Partner)(President or Other Authorized Officer)

and as such has full authority to make these affidavits and say as follows.

**DISABILITY NONDISCRIMINATION  
PURSUANT TO COUNTY RESOLUTION NOS. R-182-00 AND R-385-95,**

Pursuant to County Resolution No. R-182-00, amending Resolution No. R-385-95, the Entity shall, as a condition of award, provide written certification that the firm is not in violation of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Federal Transit Act, the Fair Housing Act, nor any other laws prohibiting discrimination on the basis of disability. Any post-award violation of these Acts may result in the contract being declared void. If any certifying Respondent or their affiliate is found in violation of the Acts, the County will conduct no further business with such attesting firm. Any violation of this Resolution may result in debarment.

\_\_\_\_\_ The Entity affirms under oath that the Entity is not in violation of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Federal Transit Act, the Fair Housing Act, nor any other laws prohibiting discrimination on the basis of disability.

---

**FAMILY LEAVE  
PURSUANT TO COUNTY RESOLUTION NO. R-183-00**

Pursuant to County Resolution No. R-183-00, the Entity shall, as a condition of award, provide written certification that the firm provides family leave to their employees as required by the County's family leave policy. Failure to comply with the requirements of this Resolution may result in debarment.

\_\_\_\_\_ The Entity affirms under oath that the Entity is in compliance with the County's family leave requirements.

---

**DOMESTIC LEAVE  
PURSUANT TO COUNTY RESOLUTION NO. R-185-00**

Pursuant to County Resolution No. R-185-00, the Entity shall, as a condition of award, provide written certification that the firm is in compliance with the County's domestic leave policy. Failure to comply with the requirements of this Resolution may result in the contract being declared void, the contract being terminated, and/or the firm being debarred. The obligation to provide domestic leave to their employees shall be a contractual obligation.

\_\_\_\_\_ The Entity affirms under oath that the Entity is in compliance with the County's domestic leave policy.

**CURRENTLY DUE FEES OR TAXES,  
PURSUANT TO SECTION 2-8.1 (c)  
OF THE MIAMI-DADE COUNTY CODE**

Pursuant to Section 2-8.1(c) of the Code, the Entity shall verify that all delinquent and currently due fees or taxes - including but not limited to real and property taxes, utility taxes and occupational licenses - collected in the normal course by the County Tax Collector, as well as County issued parking tickets for vehicles registered in the name of the Entity, have been paid. Failure to comply with this requirement may result in debarment.

\_\_\_\_\_ The Entity affirms under oath that the Entity does not have any County delinquent and currently due fees or taxes, or parking tickets for vehicles registered in the name of the Entity.

---

**DRUG FREE WORK PLACE  
PURSUANT TO SECTION 2-8.1.2 (b)  
OF THE MIAMI-DADE COUNTY CODE**

Pursuant to Section 2-8.1.2 (b) of the Code, no person or entity shall be awarded or receive a County contract for public improvements unless such person or entity certifies that it will provide a drug free workplace. Failure to comply with this policy may result in debarment for those persons or entities that knowingly violate this policy or falsify information.

\_\_\_\_\_ The Entity affirms under oath that it will comply with the County's drug free workplace requirements.

---

**CURRENT IN COUNTY OBLIGATIONS AFFIDAVIT  
PURSUANT TO SECTION 2-8.1(h)  
OF THE MIAMI-DADE COUNTY CODE**

Pursuant to Section 2-8.1(h) of the Code, no individual or entity shall be allowed to receive any additional County contracts, if it is in arrears in any payment under a contract, promissory note or other loan document with the County, or any of its agencies or instrumentalities, including the Public Health Trust, either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of the Code, until either the arrearage has been paid in full or the County has agreed in writing to a payment schedule. Failure to meet the terms and conditions of any obligation or repayment schedule with the County shall constitute a default of the subject contract

and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the County.

\_\_\_\_\_ The Entity affirms under oath that the Entity is current in its obligations to the County.

---

**CODE OF BUSINESS ETHICS AFFIDAVIT  
PURSUANT TO SECTION 2-8.1(i)  
OF THE MIAMI-DADE COUNTY CODE**

Pursuant to Section 2-8.1(i) of the Code, each person or entity that seeks to do business with the County shall adopt a Code of Business Ethics ("Ethics Code") and shall, prior to the execution of any contract between the Entity and the County, submit an affidavit stating that the Entity has adopted an Ethics Code that complies with the requirements of Section 2-8.1(i) of the Code. An entity failing to submit the required affidavit shall be ineligible for contract award.

\_\_\_\_\_ The Entity affirms under oath that the Entity has adopted an Ethics Code that complies with the requirements of Section 2-8.1(i) of the Code.

---

**This single execution shall have the same force and effect as if each of the above affidavits had been individually executed.**

\_\_\_\_\_  
(Signature of Authorized Representative)

Title \_\_\_\_\_

Date \_\_\_\_\_

STATE OF:

COUNTY OF:

The above certifications/verifications were acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_,

(Authorized Representative)

of \_\_\_\_\_,

(Name of Corporation, Partnership, etc.)

who is personally known to me or has produced as  
identification and who did/did not take an oath.

\_\_\_\_\_  
(Signature of Notary)

Notary Stamp or Seal:

\_\_\_\_\_  
(Print Name)

Notary Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

# SUBCONTRACTOR/SUPPLIER LISTING PURSUANT TO SECTION 10-34 OF THE CODE

Firm Name of Prime Entity/Respondent: \_\_\_\_\_

Project No. \_\_\_\_\_

Project Name: \_\_\_\_\_

Business Name and Address of First tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	Subcontractor Dollar Amount	(Principal Owner) Gender Race
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	Supplier Dollar Amount	(Principal Owner) Gender Race

I certify that the certifications contained in this SubEntity/Supplier Listing are to the best of my knowledge true and accurate

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Prime Entity/Respondent Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Date \_\_\_\_\_

(Duplicate if additional space is needed)

**SUBCONTRACTING POLICIES STATEMENT  
PURSUANT TO SECTION 2-8.8(4) OF THE CODE**

**(Insert Here)**

## **PROOF OF AUTHORIZATION TO DO BUSINESS**

(Attach a copy of the Certificate of Status or Authorization per 607.0128 F.S., and certificate evidencing compliance with the Florida Fictitious Name Statute per 865.09 F.S., if applicable.)

**(Insert Here)**

## APPENDIX K

### RETAIL CONCESSION PROGRAM MIAMI INTERNATIONAL AIRPORT Passenger Profile



of every ten Departing Passengers, while the proportion of Departing Passengers connecting at Miami International Airport over time is around two-fifths of all Departing Passengers. There was a dip in international departure passengers which stems from the decrease in some airlines using MIA as an international connecting hub.

Miami International Airport depends heavily on leisure travel. During 2004 approximately three-fifths of MIA passengers were leisure travelers while the remaining travelers indicated being on a business trip.

### *Int. Arrival Passengers*

Gender distribution among International Arrival Passengers remains constant throughout the tracker (50% males and 50% females). International Arrival Passengers also have an average age of 40 years old.

The percentage of Hispanics/Latin Americans arriving from international flights has remained at two-fifth Hispanic/Latino and one-third White Non-Hispanic. The vast majority of International Arriving Passengers are leisure travelers (approximately 70%).

Table 3. Int. Arrival Passengers – Demographic Profile

	Fall 2003	Total 2003	Fall 2004	Total 2004
<b>Gender</b>				
Male	51%	51%	52%	52%
Female	49%	49%	48%	48%
<b>Average Age</b>	39	39	41	40
<b>Average Income</b>	\$43,100	\$45,000	\$58,500	\$57,600
<b>Number of Trips/Year</b>	3 total; 2 using MIA	4 total; 2 using MIA	5 total; 3 using MIA	5 total; 3 using MIA
<b>Type of Trip</b>				
Business	14%	12%	17%	16%
Leisure	78%	65%	65%	68%
<b>Residency</b>				
United States	25%	31%	34%	46%
Foreign Countries	72%	68%	61%	50%
<b>Ethnicity</b>				
Black Or African-American	11%	15%	12%	17%
Hispanic/Latino	28%	43%	48%	42%
White Non-Hispanic	45%	30%	26%	27%

\* As a side note, travelers from Spain and from Latin America classify themselves as Hispanic/Latino and not as White/Non-Hispanic.



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**APPENDIX L**  
**LOBBYING RULES**

### **1.1 Purpose and Scope of Lobbying Rules**

- a) The following rules delineate the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics ordinance.

### **1.2 Definition of "Lobbyist"**

- a) A lobbyist is any person, firm or corporation employed or retained by a principal that seeks to encourage the passage, defeat or modification of
  - 1) any ordinance, resolution, action or decision of the County Commission;
  - 2) any action, decision, or recommendation of the County Manager or any County board or committee; or
  - 3) any action, decision, or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities.

### **1.3 Exclusions**

- a) Attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communication. A quasi-judicial proceeding is a hearing before a County or municipal commission or board where the rights of particular persons or entities are determined and for which prior notice, the opportunity to be heard and the introduction and evaluation of evidence are required (e.g. Value Adjustment Board, Community Zoning Appeals Board, Equal Opportunity Board).
- b) Expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings. An expert witness is a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and special training or experience, or a person who is possessed of special knowledge or skill about the subject.
- c) A representative of a neighborhood association who appears without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item. A neighborhood association is an organization of residential homeowners and tenants created to address quality of life issues in a defined neighborhood or community.
- d) A representative of a not-for-profit community based organization for the purpose of requesting a grant, without special compensation or reimbursement for the appearance. A community based organization is a not-for-profit association or

corporation organized under state or local law to engage in community development activities (including, but not limited to, housing and economic development activities) and has as its primary purpose the improvement of the physical, economic or social environment by addressing one or more of the critical needs of the area, with particular attention to the needs of people with low or moderate incomes

- e) Employees of a principal whose normal scope of employment does not include lobbying activities.

#### **1.4 Examples of Lobbying Activities**

a) Lobbying activities include but are not limited to:

- 1) Meetings or communication with elected officials or staff regarding a particular solicitation or product (i.e. time frames for the solicitation, specifications, qualifications, etc.).
- 2) Meetings or communication with elected officials or staff to discuss issues regarding a prior or ongoing solicitation or contract when a resolution of the matter may require approval of the Board of County Commissioners, the County Manager and his or her designee or a County board or committee.
- 3) Meetings or communication with elected officials or staff regarding any matter where the lobbyist is seeking to influence a decision or recommendation of staff on any matter that will require action or decision by the Board of County Commissioners, the County Manager or any County board or committee.
- 4) Meetings or communication with elected officials or staff regarding policy matters that may foreseeably before the Board of County Commissioners, the County Manager or any County board or committee.

#### **1.5 Examples of Activities Not Constituting Lobbying**

a) Activities that do not constitute lobbying include but are not limited to the following:

- 1) Requests for information about procedures, forms, budgets or other requirements on behalf of another
- 2) Appearances at meetings or communications with staff or an elected official at the department or elected official are request or a description of materials or services available in response to a departmental request.
- 3) Advices or services communicated to a department or an elected official which arise out of an existing contractual obligation to the county or municipality.
- 4) Meetings or communication to provide staff or elected officials with general information regarding a firm's background or expertise.

## **1.6 General Registration Requirements**

- a) Every lobbyist must file an annual registration form with the Clerk at the time of initial registration and on or before January 15<sup>th</sup> of each year thereafter, along with an annual registration fee of four hundred and ninety dollars (\$490.00).
- b) Every lobbyist must file a registration form with the Clerk of the Board for each client within five days of being retained by a principal or before conducting any lobbying activities, whichever comes first.
- c) The principal must also submit a principal authorization form prior to any lobbying. The principal must identify whether the lobbyist is retained for a particular matter or may lobby on any matter regarding the principal.
- d) Every lobbyist must file a Notice of Withdrawal when the representation ends. The lobbyist must file an expenditure statement for the preceding year.

## **1.7 Selection Committee Registration Requirements**

- a) Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection n, technical review or similar committee shall list on an affidavit provided by the County, all individuals who may make a presentation. The affidavit shall be filed with the Clerk of Board at the time the response is submitted.
- b) The individual or firm must submit a revised affidavit for any additional team members with the Clerk of the Board at least 2 days prior to the oral presentation. Any person not listed on the revised affidavit or who is not a registered lobbyist will not be permitted to participate in the oral presentation.
- c) All additional team members, who are lobbyists, as defined herein, must file a principal authorization form (for the individual or entity) with the Clerk of the Board of County Commissioners prior to the oral presentation.

## **1.8 Not for Profit Registration Requirements**

- a) A lobbyist for a not-for-profit organization (unless lobbying for a community-based organization seeking grant funds) must register and file the required expenditure form. Upon request, the Clerk of the Board may waive the applicable registration fees.

## **1.9 Expenditure Reports**

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- a) All registered lobbyists must file an expenditure report with the Clerk of the Board by July 1st of each year. The date of filing is the date that the report is received by the Clerk's office.
- b) A lobbyist must file a report for every principal and must list all expenditures in excess of twenty-five dollars (\$25.00) for the preceding calendar year. The form must be filed even if the lobbyist did not make any expenditures during the prior year.

#### **1.10 Expenditure Categories**

- a) The lobbyist must report expenditures in the following categories: communications, entertainment, food and beverages, lodging, media advertising, publications and other. The information covered in each category is:
  - 1) "Communications" means dissemination of information, including but not limited to the following means: audio-visual materials, signs, placards, buttons, promotional materials, or other display materials; together with any associated production services. This category does not include media advertising, publications or research.
  - 2) "Entertainment" means amusement or recreation including but not limited to sporting, hunting, fishing, theatrical, artistic, cultural and musical activities or events.
  - 3) "Food and Beverages" means meals, snacks or edible substances or liquids for drinking including services associated therewith.
  - 4) "Lodging" means sleeping or living accommodations for an individual for one or more nights.
  - 5) "Media advertising" means newspaper and magazine advertising, radio and television advertising and outdoor advertising including production services and copyrighting services.
  - 6) "Other" means any item or service which is not included in one of the specified categories; this category does not include any item or service which is not required by law to be reported.
  - 7) "Publications" means mass-produced, printed materials including but not limited to magazines, newsletters, brochures or pamphlets, which expressly encourage to communicate with agency officials or employees or to influence an agency with respect to a decision of the agency in the area of policy or procurement or which are designed to communicate with agency officials or employees.
  - 8) "Research" means obtaining information relating to a specific policy issue or procurement matter regardless of the form or medium in which such information is provided including, but not limited to, surveys, information services, periodicals and consultants or consultant services to gather data or statistics.
  - 9) "Special Events" means large scale functions, including but not limited to receptions, banquets, dinners or fairs to which more than 250 persons are invited and for which the expenditures associated with hosting the function are negotiated

with a catering service or facility at a single, set price or which include multiple expenditure categories.

10) "Travel" means transporting an individual from, one place to another, regardless of the means used.

- b) Certain items such as communications, publications and research are office expenses if performed by the lobbyist or principal or their employees. If those functions are performed by independent contractors, other than the lobbyist or principal or an affiliate controlled by the principal, they are reportable under the appropriate expenditure category.
- c) If an expense is incurred for a business purpose unrelated to lobbying and the product of that expense is later used for a lobbying purpose, the expenditure does not have to be reported.

#### **1.11 Penalties for Late Filing**

- a) A late fee of fifty dollars per day per report will automatically be assessed for any report filed after the due date. All fines must be paid to the Clerk of the Board of County Commissioners.
- b) The Clerk of the Board of County Commissioners will notify all lobbyists who have failed to file by July 15<sup>th</sup> of each year that they are not in compliance with the ordinance and of the current fines assessed against the lobbyist.
- c) A lobbyist is automatically suspended and may not lobby any employee, elected official or before any County board (including the Board of County Commissioners) if the lobbyist has not filed an expenditure report by September 1st of each year.
- d) The Clerk of the Board of County Commissioners must provide the Ethics Commission with a report listing all lobbyists who have either failed to file disclosure reports or pay assessed fines by October 1st of each calendar year. The Ethics Commission will provide the list to the Commission Advocate who may initiate complaint proceedings against any lobbyist for failure to file an expenditure report and/or pay assessed fines.

#### **1.12 Appeals**

- a) Any lobbyist may appeal a fine and request a hearing before the Ethics Commission by filing an appeal with the Ethics Commission within fifteen days receipt of the Notice of Violation. Late fees will continue to accrue after an appeal unless the required forms are filed.
- b) The lobbyist must mail or fax a letter to the Executive Director of the Ethics Commission stating the reasons for the appeal. The lobbyist must include in his or her notice of appeal any request for a hearing before the Ethics Commission. The lobbyist must attach any documentation or evidence for consideration by the Ethics Commission in making a determination on the appeal at the time the notice of appeal is filed.

- c) The Ethics Commission may delegate determinations of appeals without a request for hearing to Commission staff. The staff may have the authority to waive fines in whole or part for good cause shown. Any determinations by staff must be ratified by the Ethics Commission or a committee appointed by the Chair.
- d) A hearing on an appeal under this ordinance may be heard by a committee appointed by the Chair or the Ethics Commission as a whole. The Ethics Commission may waive any fines, in whole or part, for good cause shown.

### **1.13 Contingency Fees**

- a) After May 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

### **1.14 Departmental Responsibilities**

- a) All departments and agencies must maintain a visitor log for anyone seeking to do business with the department or agency or seeking administrative action from the department or agency. The log should include information regarding the name of the visitor, the staff person or persons visited and the purpose of the visit (i.e. name of matter or agenda item number).
- b) All elected officials, board members and employees shall be diligent to ascertain whether persons appearing before them have registered as lobbyists. County personnel may check on a lobbyist's status through the Lobbyist Registration section of the Metronet or by calling the Clerk of the Board of County Commissioners. Elected officials, board members and employees may not knowingly permit a person who is not registered to lobby them regarding an issue.

### **1.15 Penalties for Lobbying Violations**

- a) The Ethics Commission may prohibit any lobbyist who commits a lobbying violation from lobbying before the Board of County Commissioners or any committee, board or personnel of the Miami-Dade County for a period of: 1) ninety days following determination of the first violation; 2) one year following determination of the second violation and 3) five years from determination of the third violation.
- b) Any lobbyist who commits a lobbying violation is also subject to a two hundred and fifty-dollar fine for the first violation and a five hundred-dollar fine for the second violation.
- c) The County Manager or the Board of County Commissioners may void any contract where a lobbying violation has occurred.

MIAMI-DADE AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

EXHIBIT A Summary

Item #	Package #	UNIT #	TERMINAL	LOCATION	SIZE	POTENTIAL REDUCTION BY PROPOSER	POTENTIAL REVISED SIZE	CONCEPT CATEGORY	PROPOSED CONCEPT
1	1	H2-NS01	South	Terminal - H	1,046	20%	837	News/Books	Newsstand
2	1	J2-RT09	South	Terminal - J	1,124	20%	899	News/Books	News & Gift
3	1	D.18.A	North	Zone D	1,402	20%	1,122	News/Books	News Café
4	1	J2-RT12	South	Terminal - J	2,275	20%	1,820	News/Books	News/Café & Bakery
5	1	J1-NS01	South	Terminal - J	162	n/a	162	News/Books	Newsstand
					62%				
					6,009		4,840		
6	1	J2-RT03	South	Terminal - J	174	n/a	174	Entertainment & Consumer Electronics	CD's and Tapes
7	1	H2-RT05	South	Terminal - H	673	20%	538	Open	Open
8	1	H2-RT08	South	Terminal - H	1,157	20%	926	Gift Specialty Shops	Open
9	1	J2-NS03	South	Terminal J	174	n/a	174	Fashion Apparel & Accessories	Open
10	1	J2-RT07	South	Terminal - J	1,520	20%	1,216	Fashion Apparel & Accessories	Logo Apparel
					3,698		3,028		
Total					9,707		7,868		
11	2	J2-NS02	South	Terminal - J	1,293	20%	1,034	News/Books	Newsstand
12	2	H2-RT09	South	Terminal - H	1,474	20%	1,179	News/Books	News & Gift
13	2	J2-RT01	South	Concourse J	1,750	20%	1,400	News/Books	News Café
14	2	D.-4.A	North	Zone D	750	20%	600	News/Books	Newsstand
15	2	J2-NS01	South	Concourse J	501	20%	401	News/Books	Newsstand
					63%				
					5,768		4,614		
16	2	J2-RT10	South	Terminal - J	581	20%	465	Open	Open
17	2	H2-RT03	South	Terminal - H	1,239	20%	991	Gift Specialty Shops	Art Local Crafts
18	2	J2-RT06	South	Terminal - J	174	n/a	174	Gift Specialty Shops	Bulk Candy/Chocolates
19	2	J2-RT02	South	Terminal - J	453	20%	362	Open	Open
20	2	H2-RT06	South	Terminal - H	997	20%	798	Personal Care	Open
					3,444		2,790		
Total					9,212		7,404		
21	3	H2-RT02	South	Terminal - H	1,720	20%	1,376	Sundries	Sundries
22	4	H2-RT10	South	Terminal - H	1,747	20%	1,398	Books	Book/Café
23	5	H2-RT07	South	Terminal - H	1,046	20%	837	Fashion Jewelry & Watches	Fashion Watches/Jewelry
24	6	J2-RT11	South	Terminal - J	973	20%	778	Entertainment & Consumer Electronics	High-Tech Gadgets
25	7	J2-RT04	South	Terminal - J	966	20%	773	Fashion Apparel & Accessories	Regional Apparel
26	8	D.20.A	North	Zone D	969	20%	775	Gift Specialty Shops	Local - Unique Gifts
27	8	H2-RT01	South	Terminal - H	512	20%	410	Gift Specialty Shops	Local - Unique Gifts
Total					1,481		1,185		

273


# Package

1

1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP

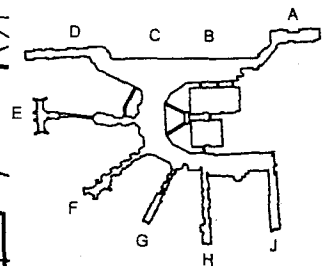
CODE:	SPACE CLASS	SQ. FT.
	NEWS/BOOKS	1,046

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

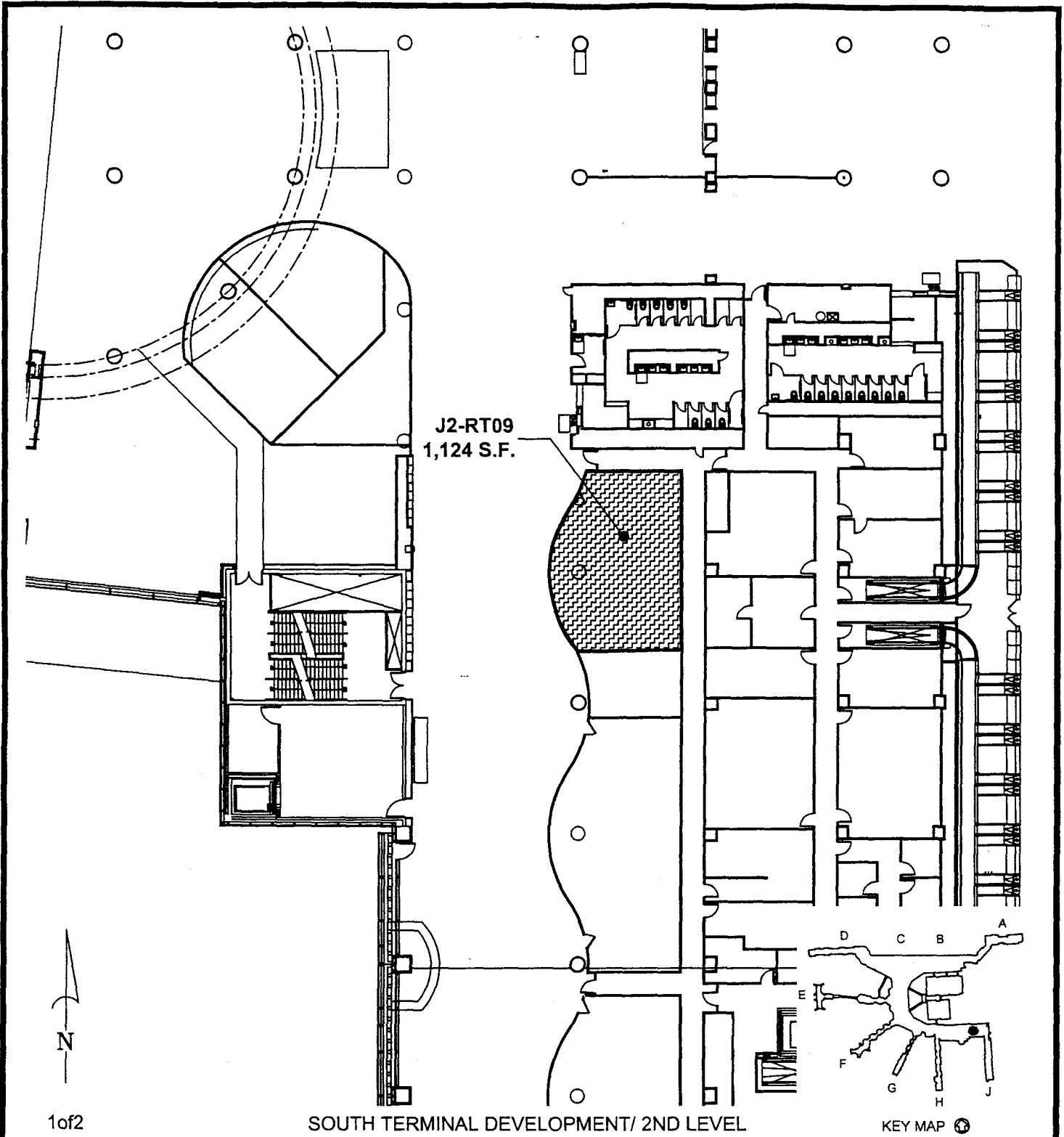
EXHIBIT A  
PROPOSED RETAIL CONCESSION  
ZONE H



H2-NS01  
1,046 S.F.



225



CODE:

SPACE CLASS

SQ. FT.



NEWS/BOOKS

1,124

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

EXHIBIT A  
PROPOSED RETAIL CONCESSION  
ZONE H

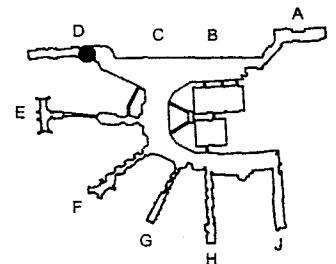
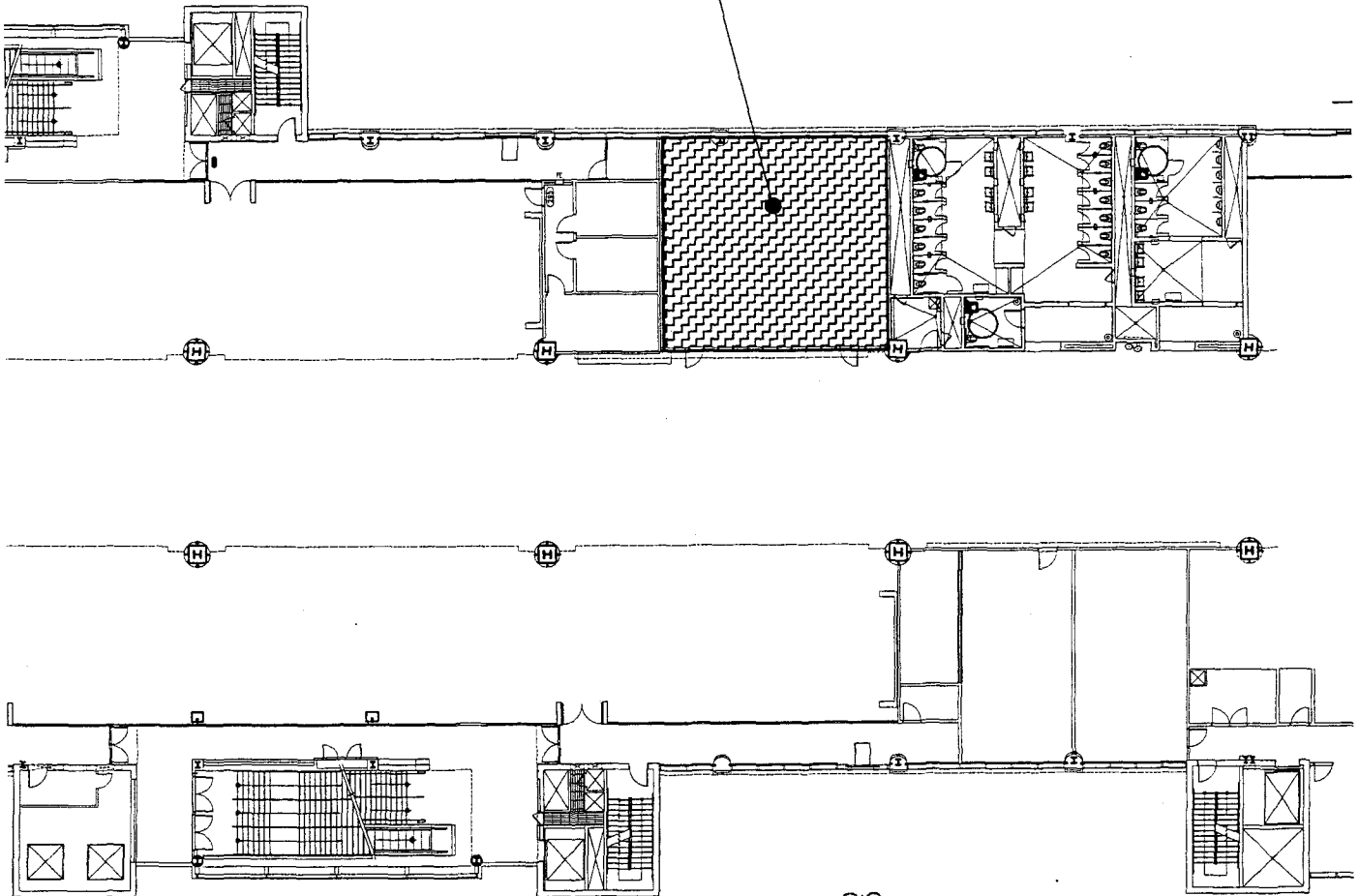
SCALE: 1/32" = 1'-0"

EFS #: J2-RT09

DATE: 09-15-05


276

D.18.A  
1,402 Sq. Ft.



NORTH TERMINAL DEVELOPMENT/ 2ND LEVEL

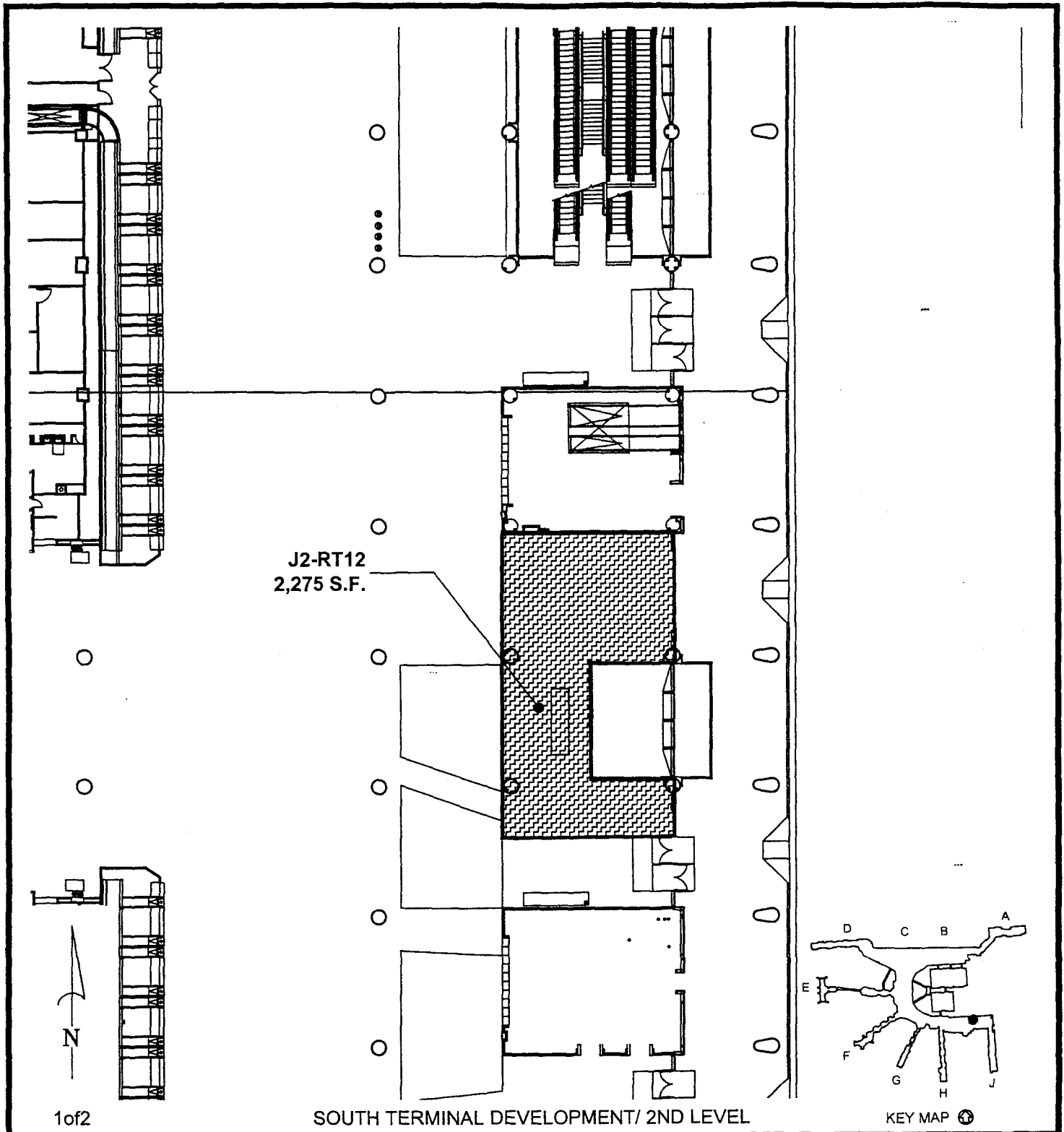
KEY MAP ①


CODE:	SPACE CLASS	SQ. FT.
	NEWS / BOOKS	1,402

227

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE D

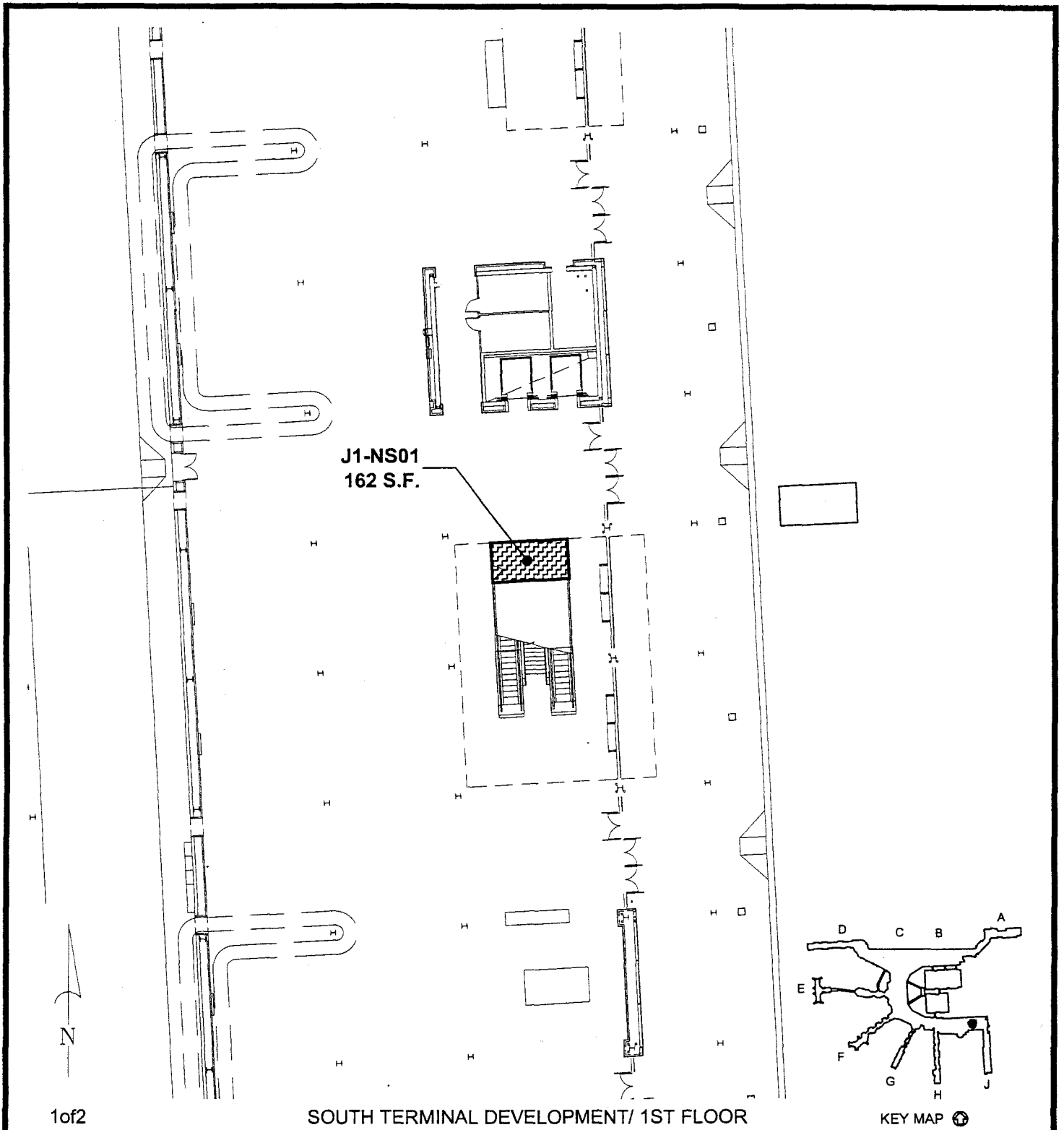


CODE:	SPACE CLASS	SQ. FT.
	NEWS/BOOKS	2,275

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE J

278



CODE:



SPACE CLASS

NEWS/BOOKS

SQ. FT.

162

274

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

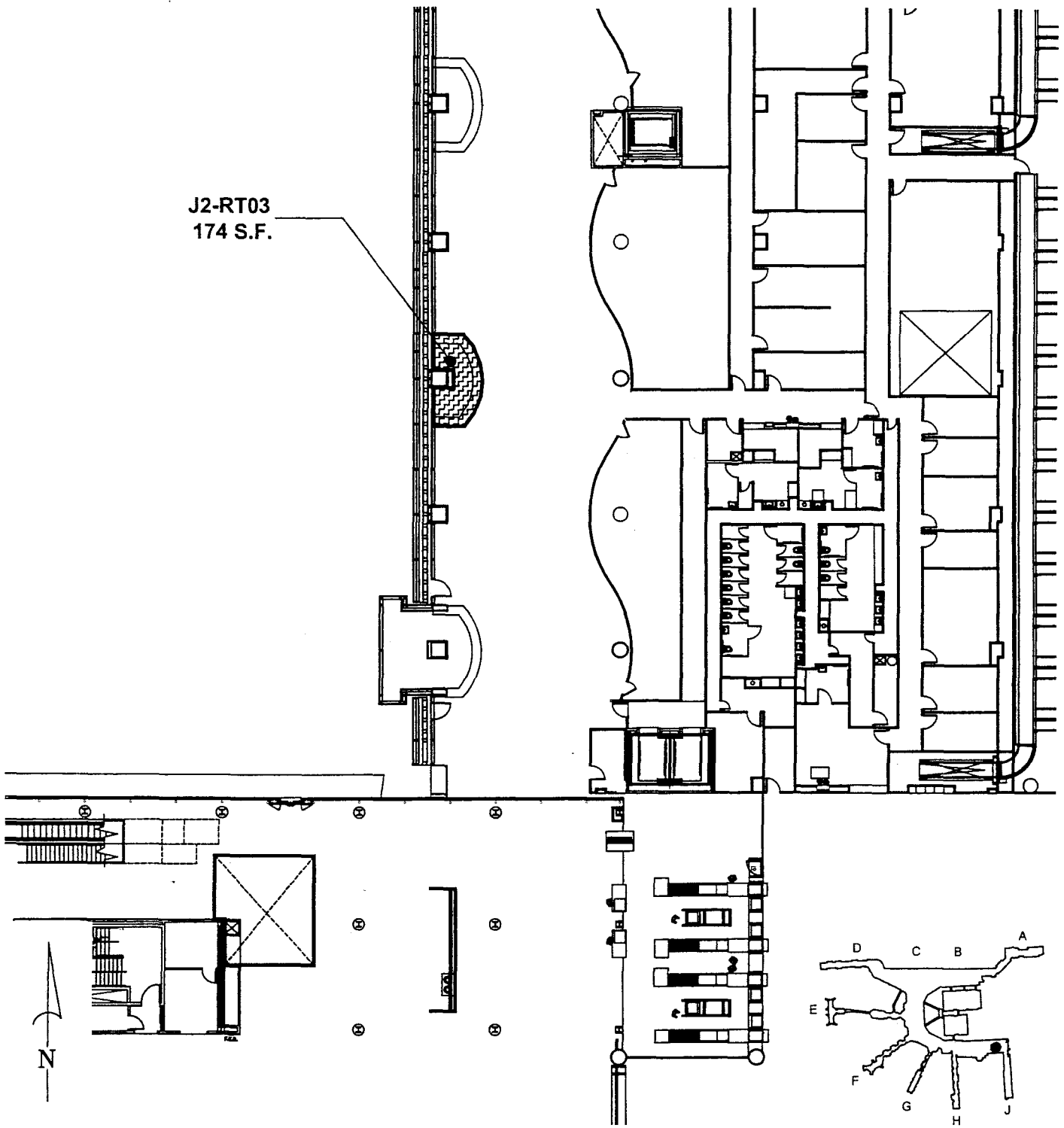
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SCALE: 1/32" = 1'-0"

EFS #: J1-NS01

DATE: 09-15-05


J2-RT03  
174 S.F.



1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP

CODE:	SPACE CLASS	SQ. FT.
	ELECTRONICS	174

280

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

## EXHIBIT A

### PROPOSED RETAIL CONCESSION ZONE J

SCALE: 1/32" = 1'-0"

EFS #: J2-RT03

DATE: 09-15-05

H2-RT05  
673 S.F.



1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP ①

CODE:

SPACE CLASS

SQ. FT.



OPEN

673

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

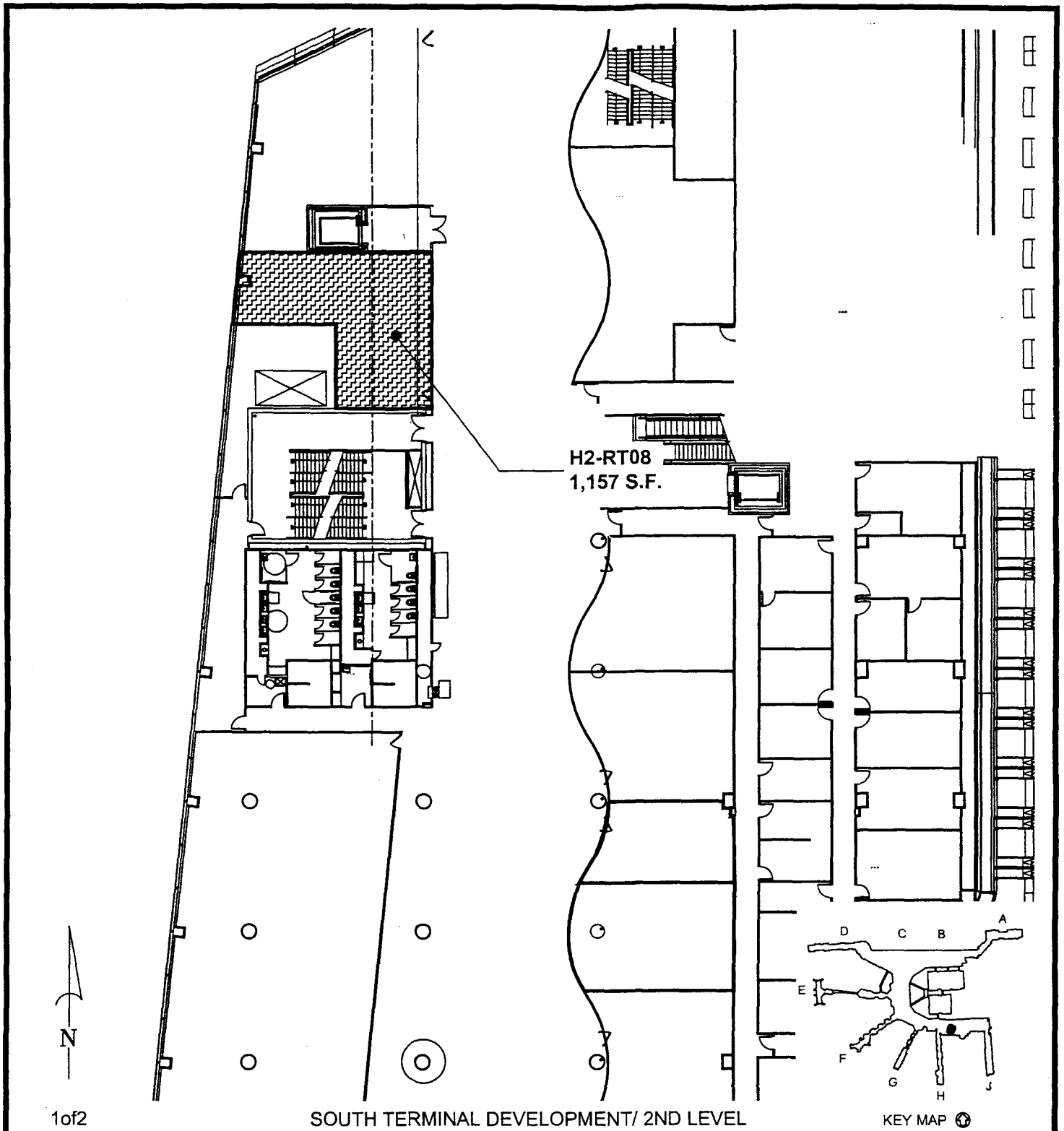
**EXHIBIT A**  
**PROPOSED RETAIL CONCESSION**  
**ZONE H**

SCALE: 1/32" = 1'-0"

EFS #: J2-NS01

DATE: 09-15-05

281



CODE:

SPACE CLASS

SQ. FT.



GIFT SPECIALTY SHOP

1,157

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

EXHIBIT A  
PROPOSED RETAIL CONCESSION  
ZONE H

282

SCALE: 1/32" = 1'-0"

EFS #: H2-RT08

DATE: 09-15-05

J2-NS03  
174 S.F.



101

1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP ①

CODE:

SPACE CLASS

SQ. FT.



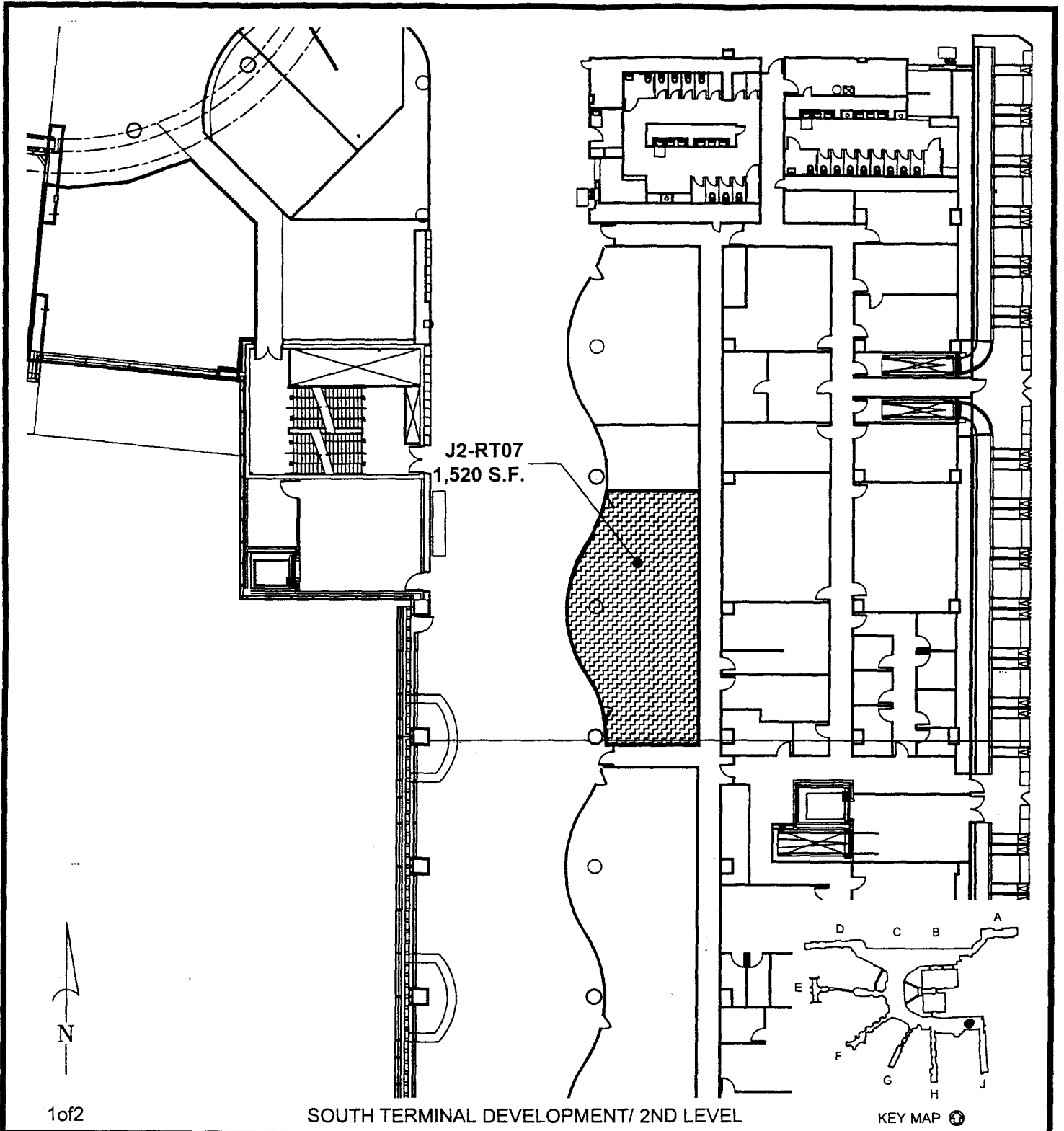
FASHION APPAREL  
& ACCESSORIES


174

283

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

**EXHIBIT A**  
**PROPOSED RETAIL CONCESSION**  
**ZONE J**



CODE:	SPACE CLASS	SQ. FT.
	FASHION APPERAL & ACCESSORIES	1,520

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

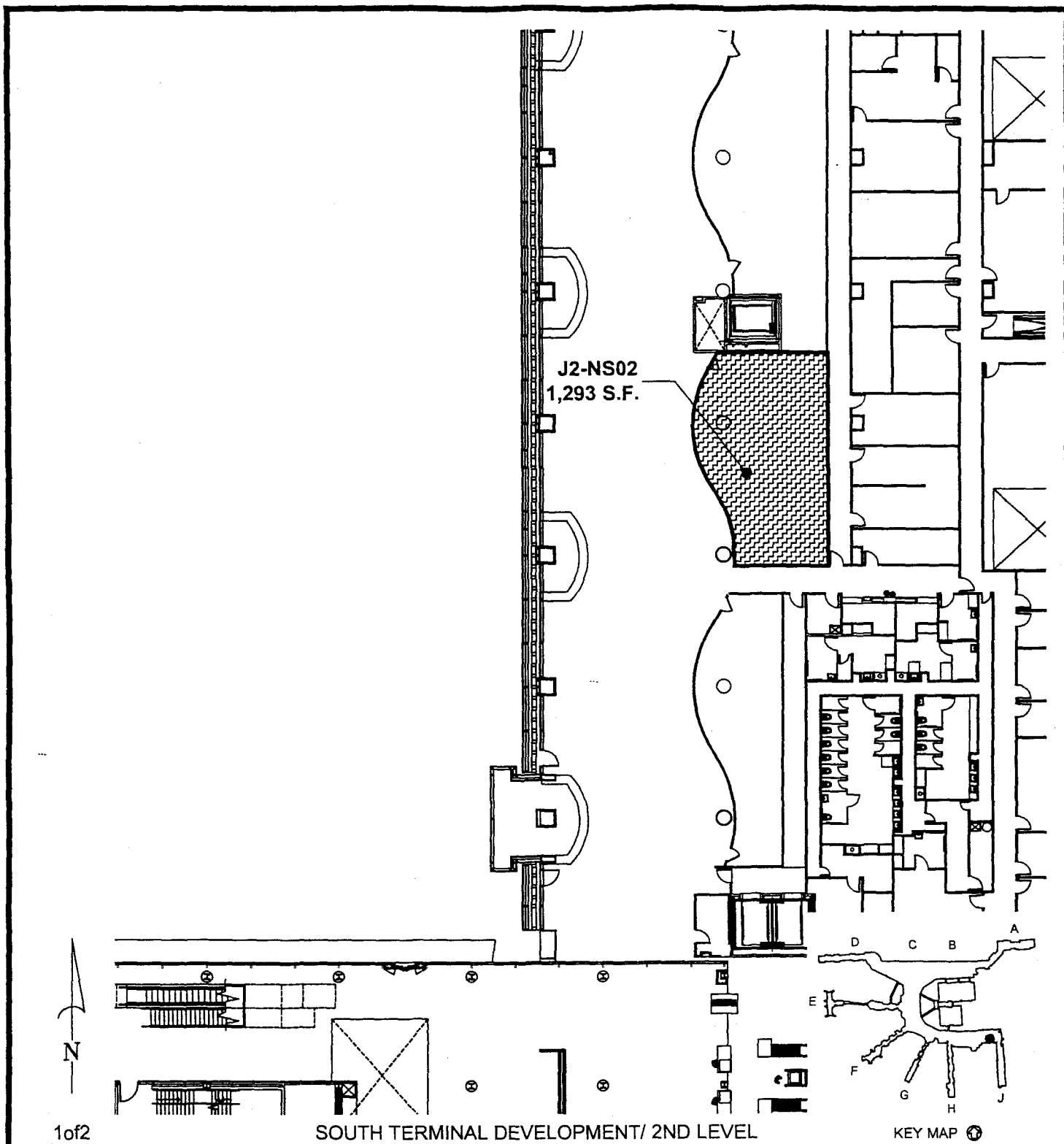
## EXHIBIT A


### PROPOSED RETAIL CONCESSION ZONE J

# Package

2

285

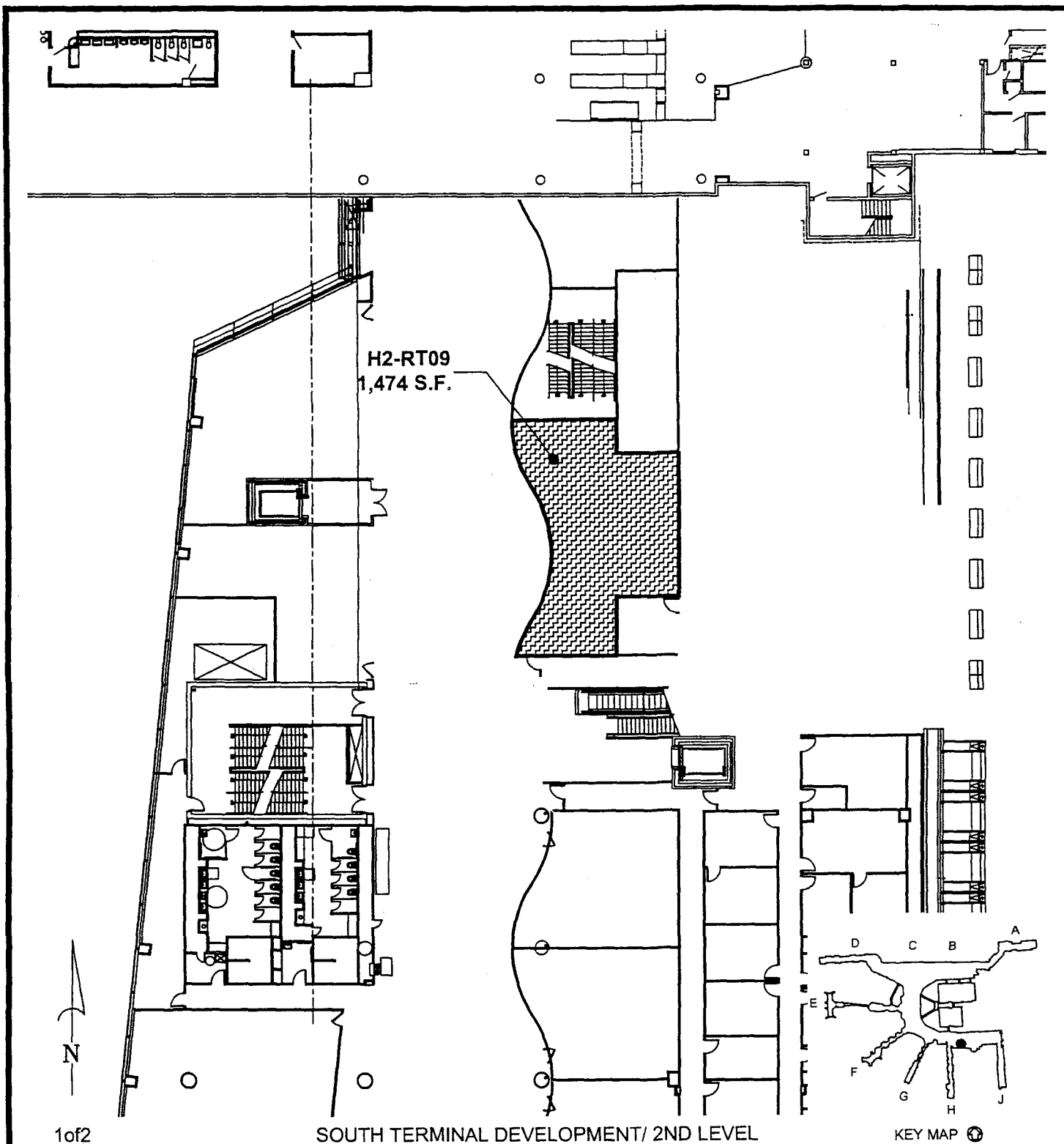


CODE:	SPACE CLASS	SQ. FT.
	NEWS/BOOKS	1,293

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE J


286



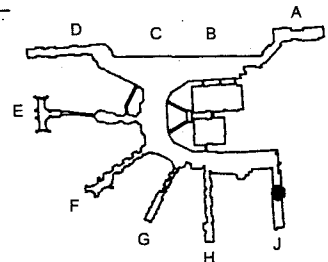
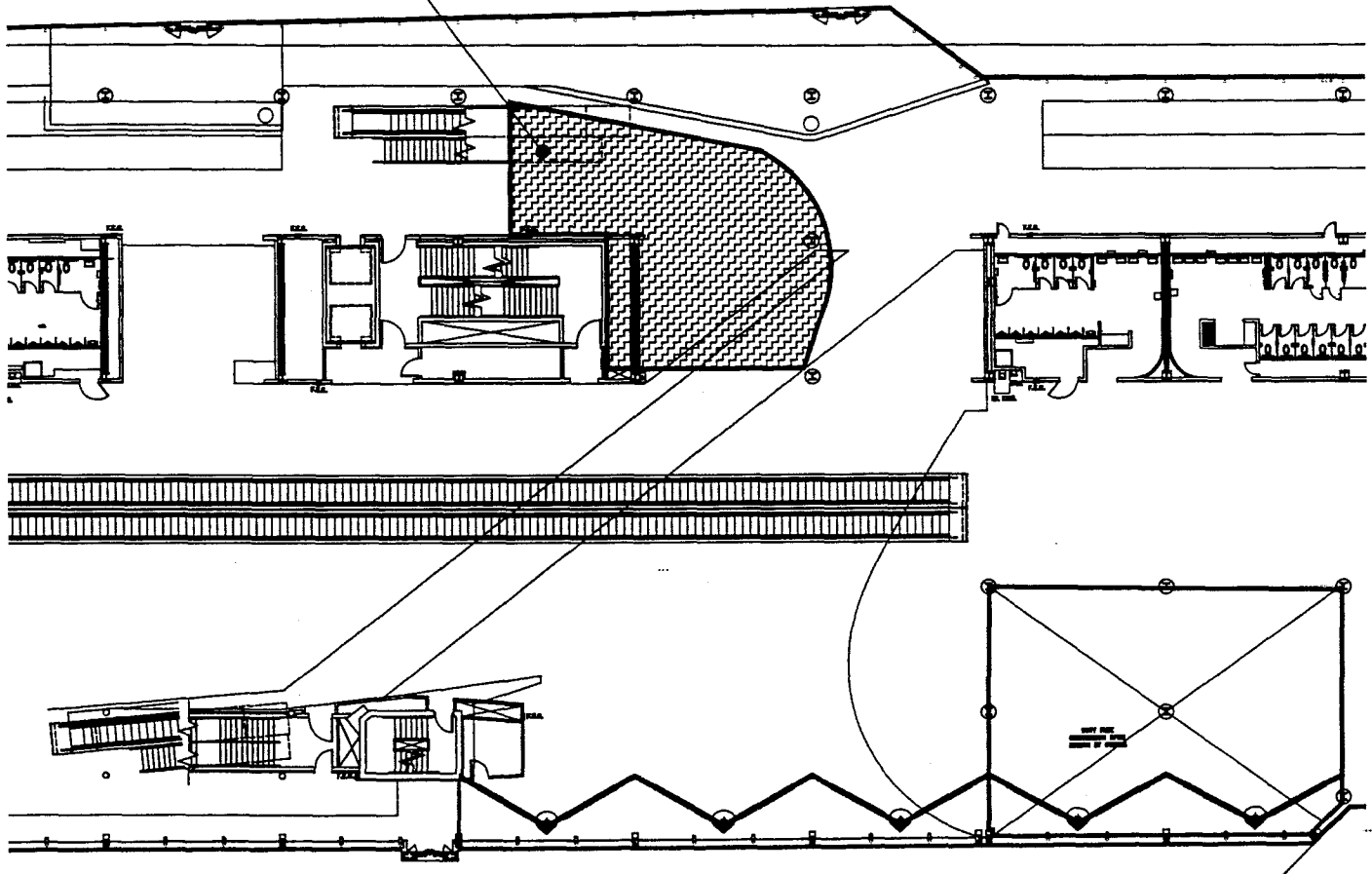
1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP

CODE:	SPACE CLASS	SQ. FT.	MIAMI DADE AVIATION DEPARTMENT MIAMI INTERNATIONAL AIRPORT
	NEWS/BOOKS	1,474	
SCALE: 1/32" = 1'-0"			<b>EXHIBIT A</b> <b>PROPOSED RETAIL CONCESSION</b> <b>ZONE H</b>
EFS #: H2-RT09	DATE: 09-15-05	287	


J2-RT01  
1,750 S.F.



1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP ①

CODE:	SPACE CLASS	SQ. FT.
	NEWS/BOOKS	1,750

288

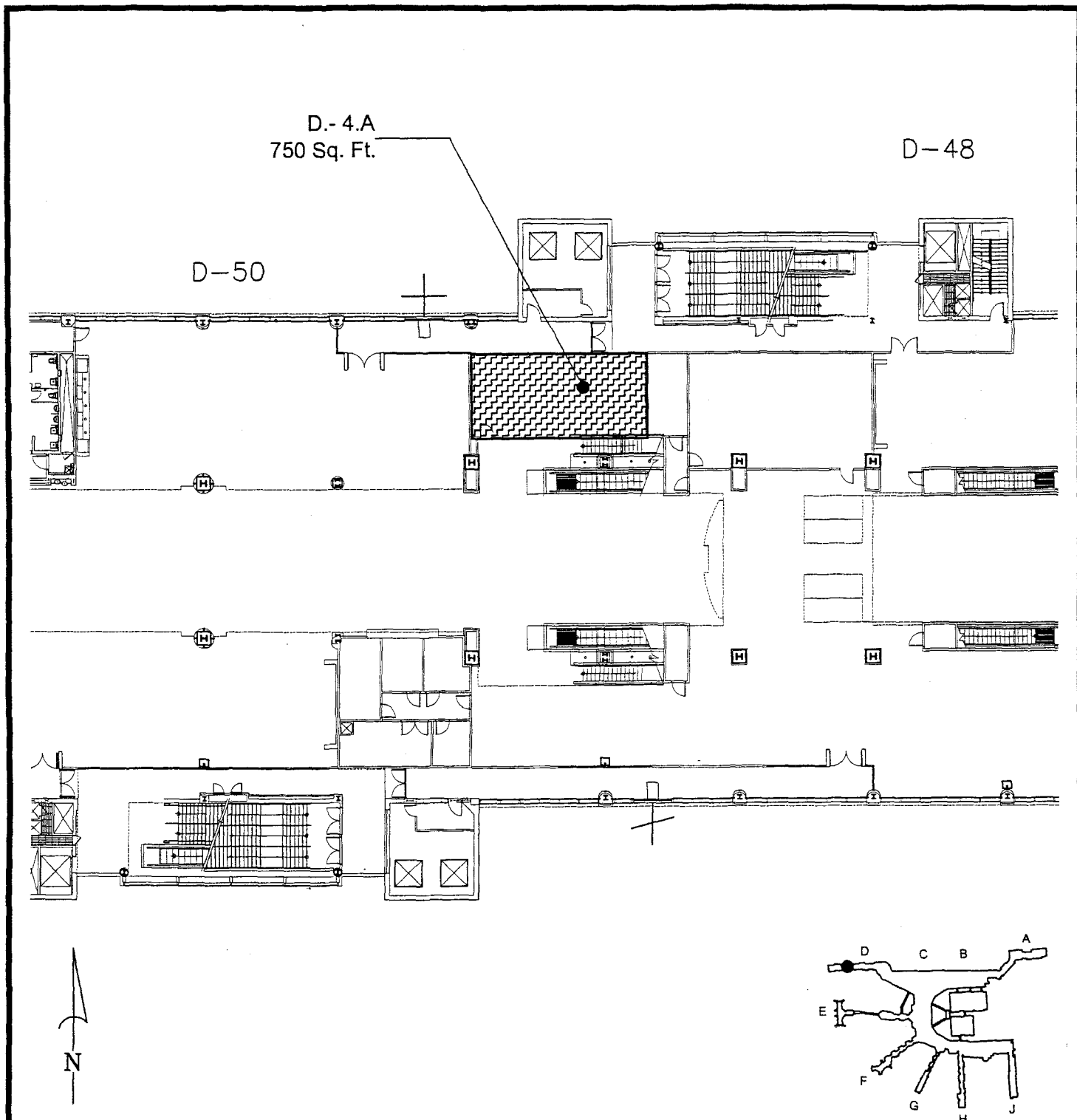
MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

## EXHIBIT A PROPOSED RETAIL CONCESSION ZONE J

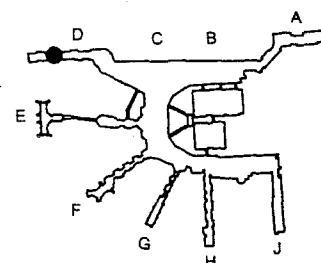
SCALE: 1/32" = 1'-0"

EFS #: J2-RT01

DATE: 09-15-05



NORTH TERMINAL DEVELOPMENT/ 2ND LEVEL



KEY MAP ①

CODE:

SPACE CLASS

SQ. FT.



NEWS & BOOKS

750

289

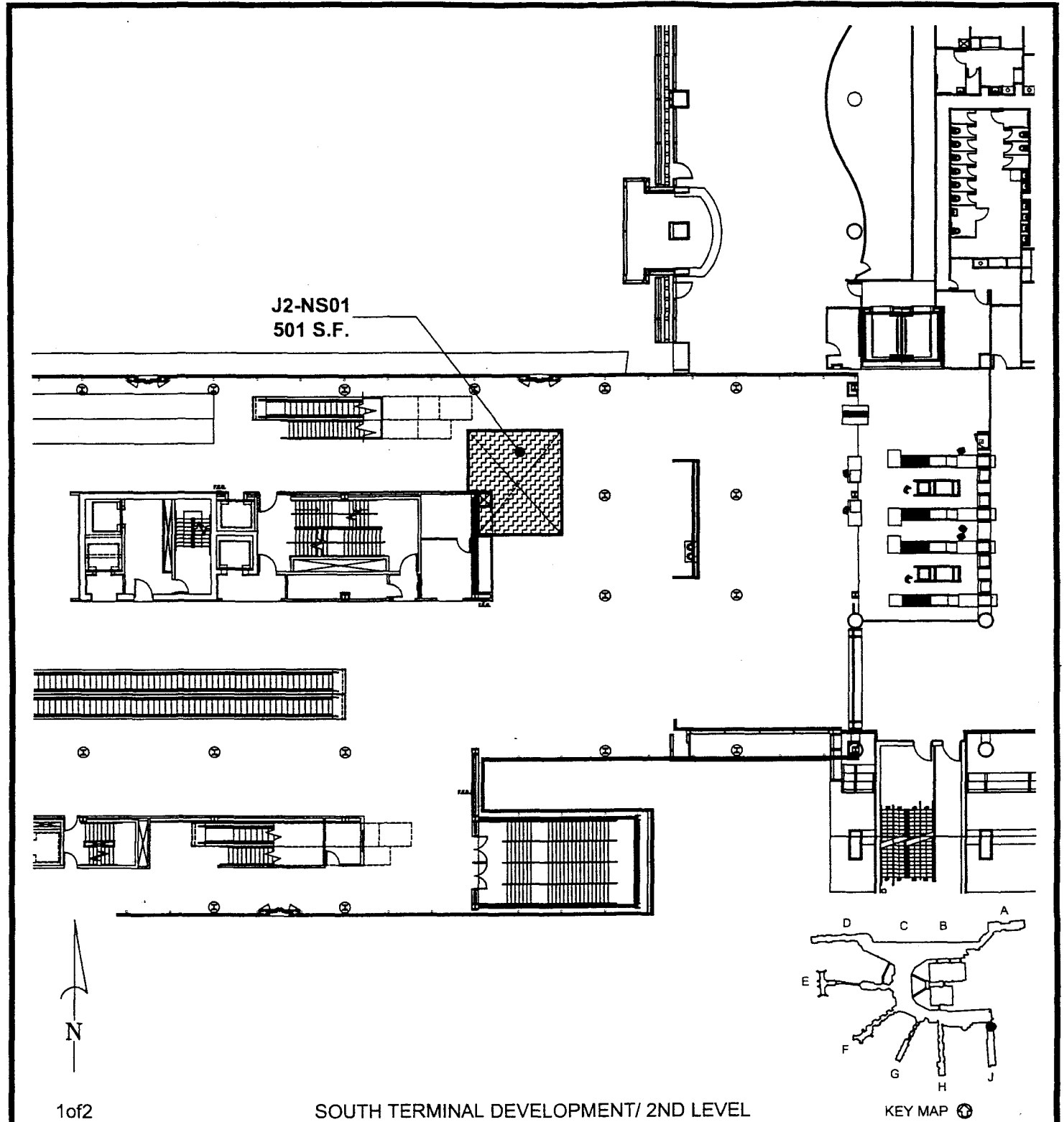
MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE D

SCALE: 1/32" = 1'-0"

EFS #: D.- 4.A

DATE: 09-15-05



CODE:

SPACE CLASS

SQ. FT.



NEWS/BOOKS

501

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

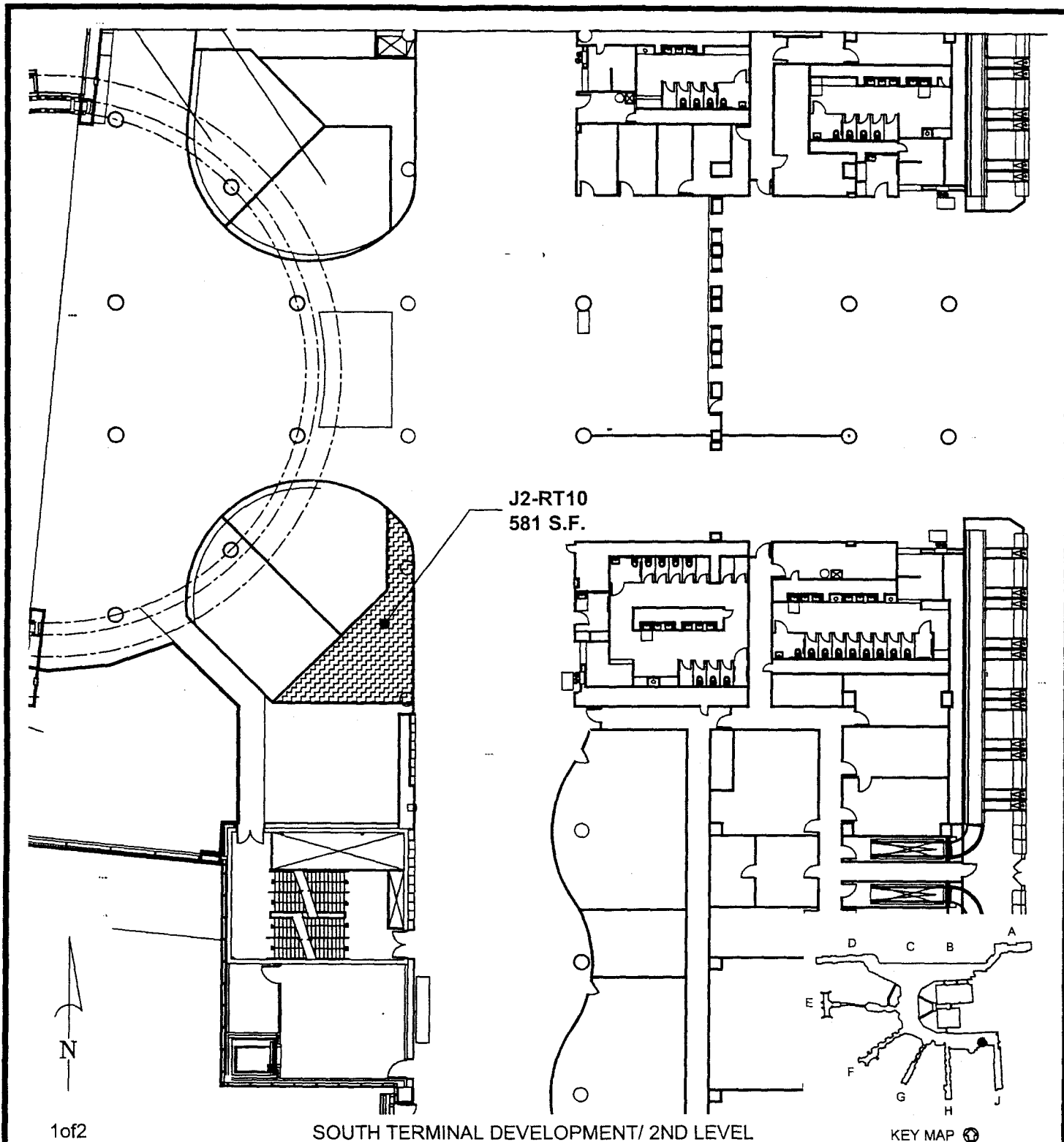
EXHIBIT A  
PROPOSED RETAIL CONCESSION  
ZONE J


SCALE: 1/32" = 1'-0"

EFS #: J2-NS01

DATE: 09-15-05

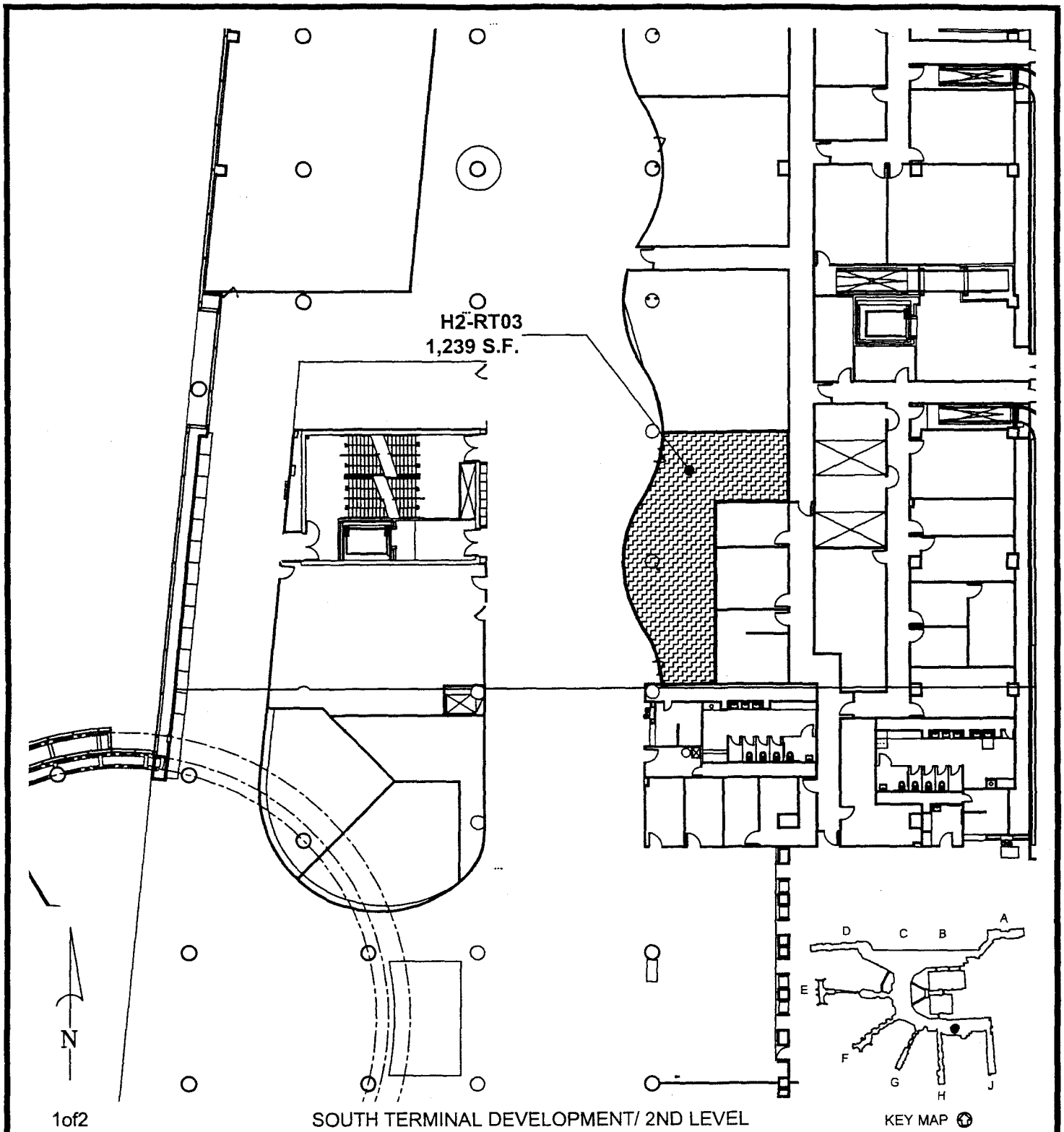
240




CODE:	SPACE CLASS	SQ. FT.
	OPEN	581

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE J

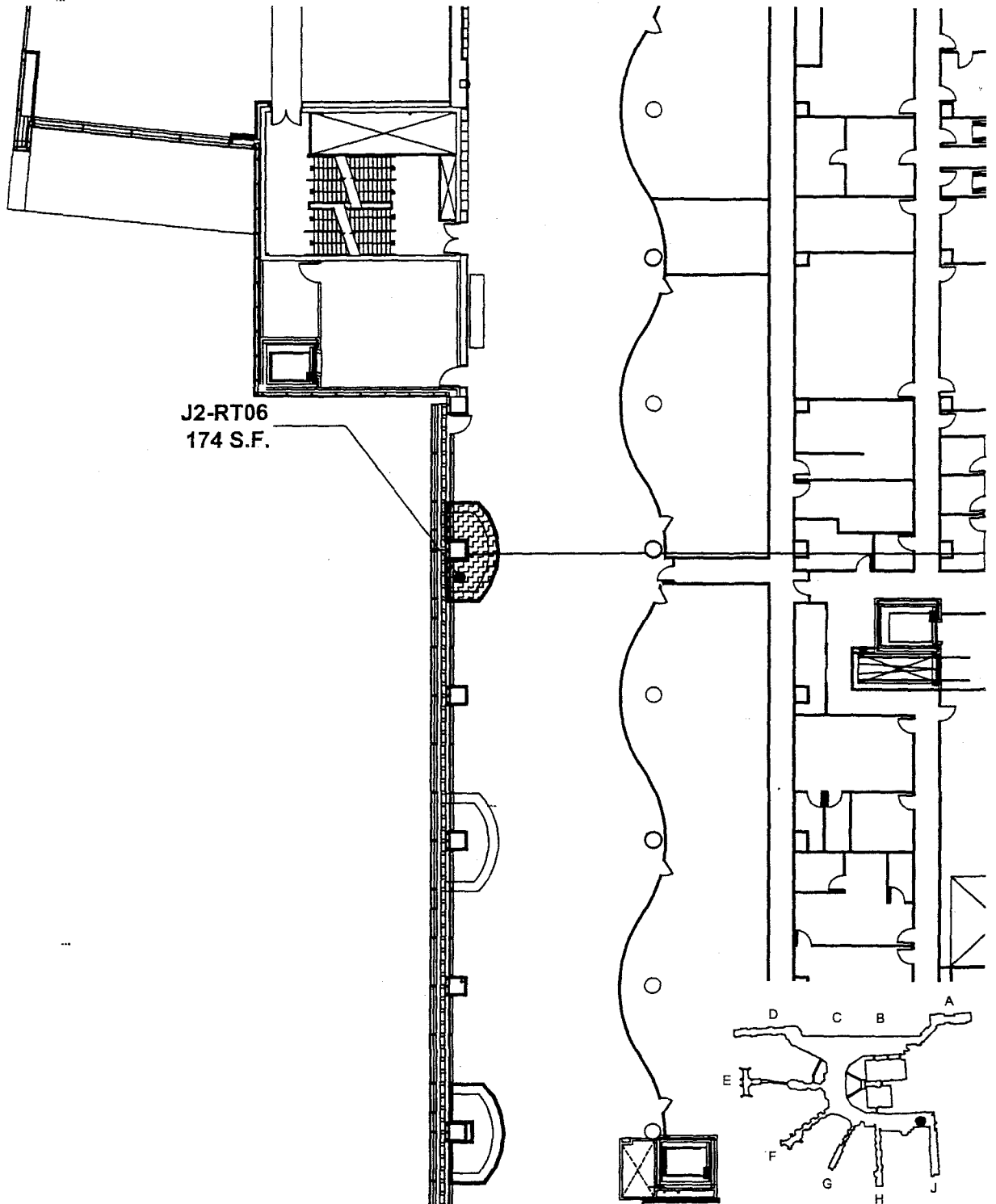


CODE:	SPACE CLASS	SQ. FT.
	GIFT SPECIALTY SHOP	1,239

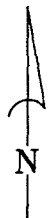
MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE H

292




J2-RT06  
174 S.F.



1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP ①

CODE:	SPACE CLASS	SQ. FT.
	GIFT SPECIALTY SHOP	174

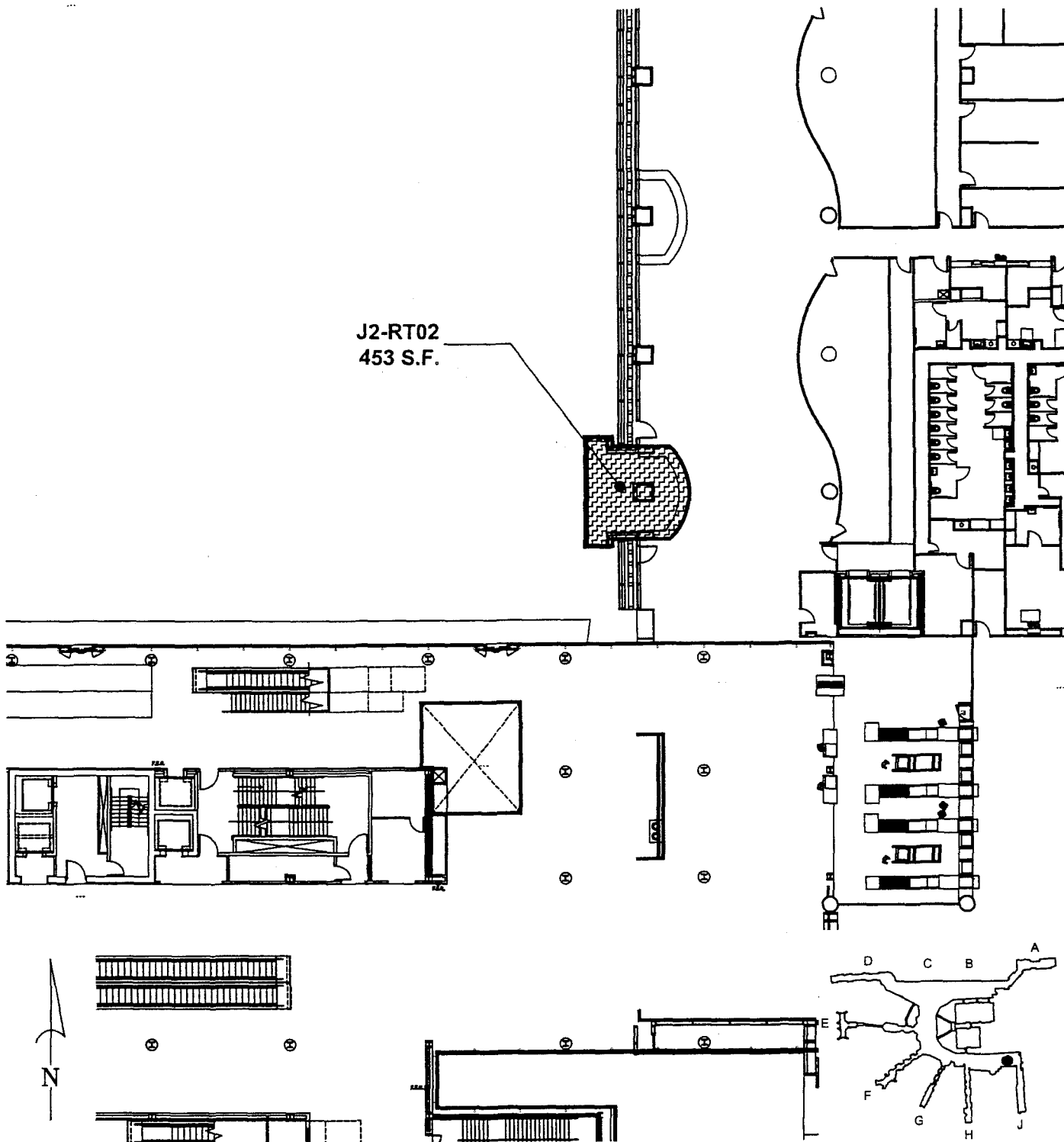
243

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

## EXHIBIT A

### PROPOSED RETAIL CONCESSION ZONE J


J2-RT02  
453 S.F.



1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP

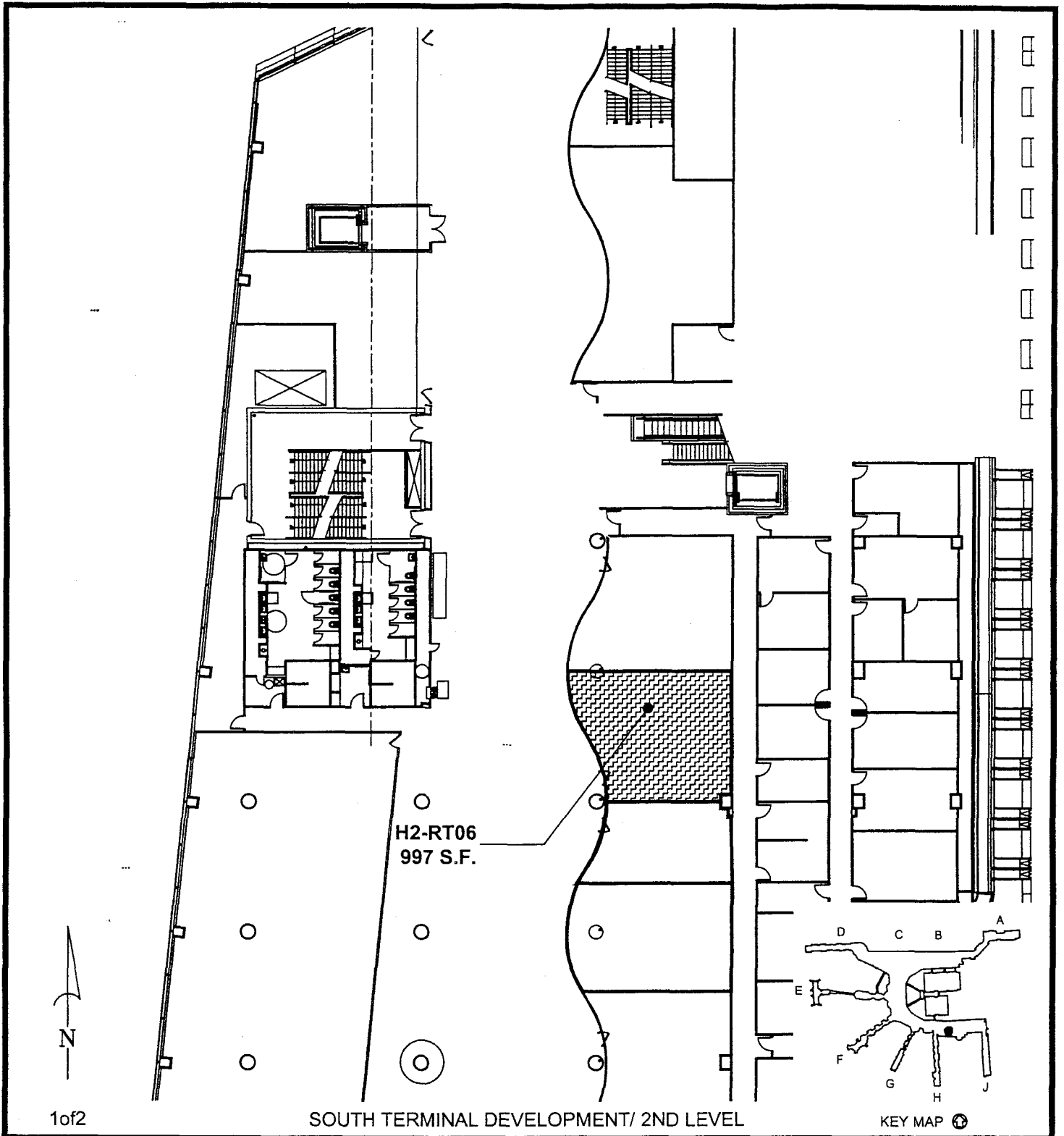
CODE:	SPACE CLASS	SQ. FT.
	OPEN	453


294

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

## EXHIBIT A

### PROPOSED RETAIL CONCESSION ZONE J



CODE:	SPACE CLASS	SQ. FT.
	PERSONAL CARE	997

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

## EXHIBIT A

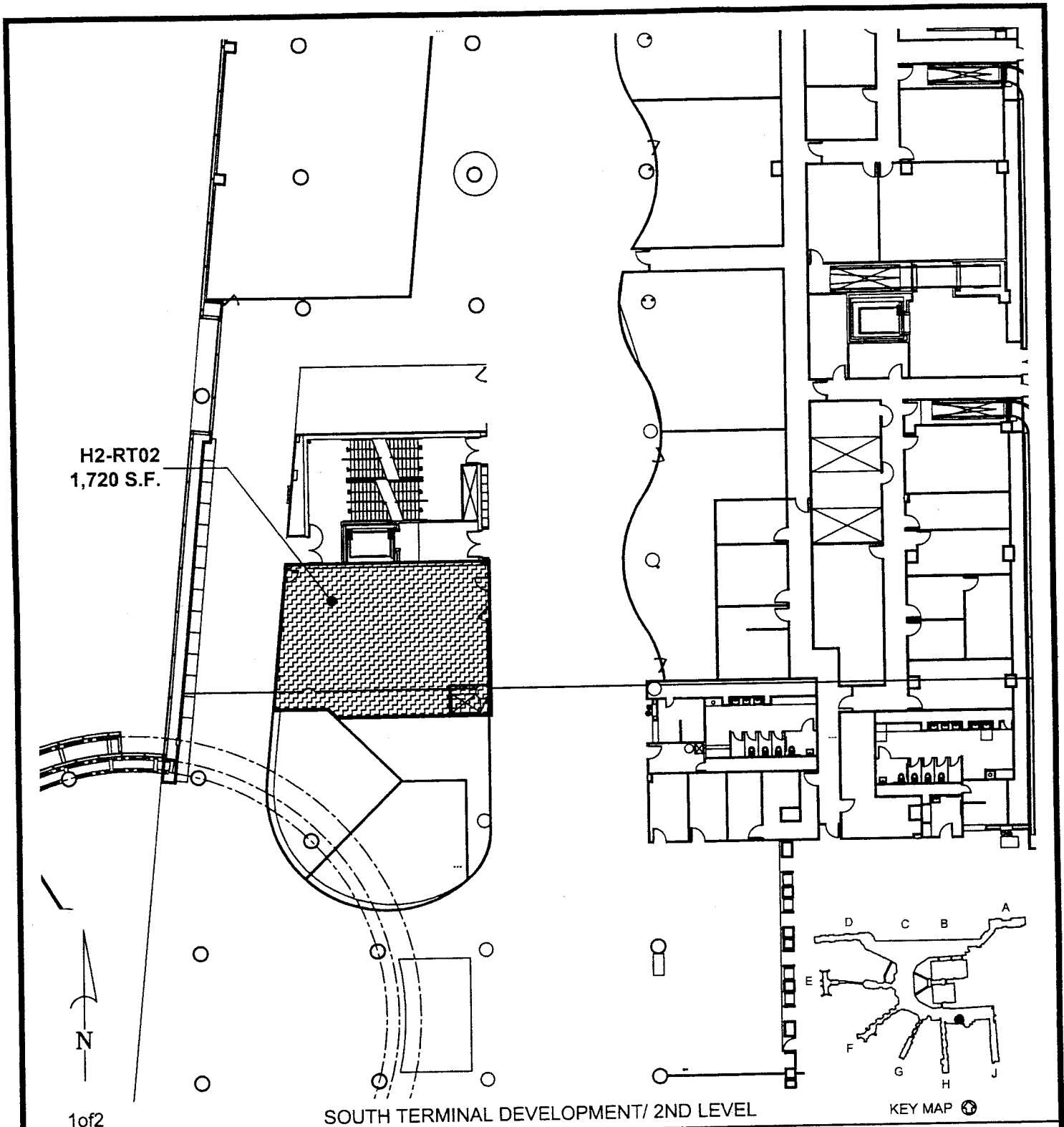
### PROPOSED RETAIL CONCESSION ZONE H


SCALE: 1/32" = 1'-0"    EFS #: H2-RT06    DATE: 09-15-05

295

Package

3



CODE:	SPACE CLASS	SQ. FT.
	SUNDRIES	1,720

297

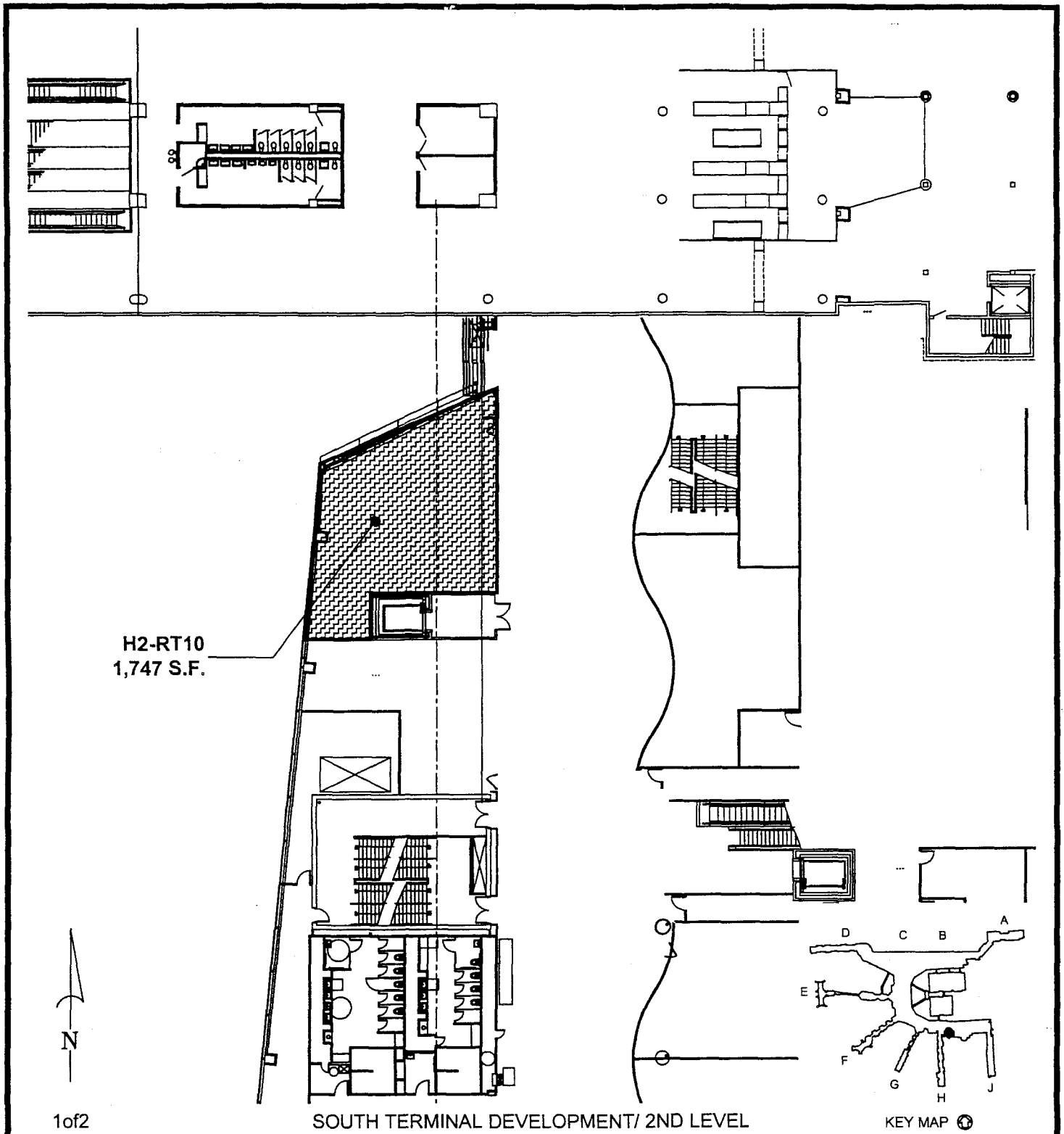
MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT


## EXHIBIT A

### PROPOSED RETAIL CONCESSION ZONE H

# Package

4



CODE:	SPACE CLASS	SQ. FT.
	BOOKS	1,747

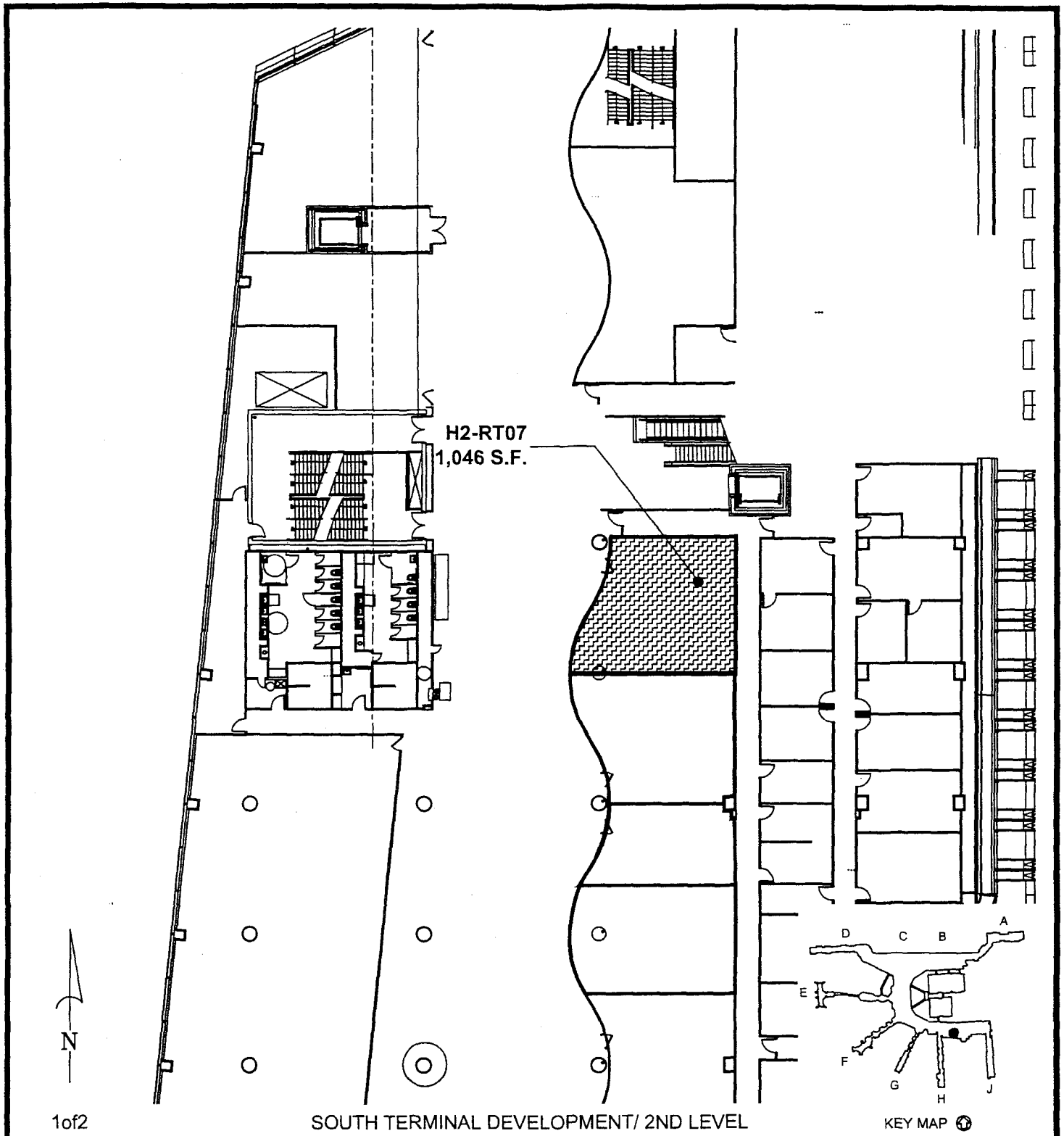
299


MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE H

# Package

5



CODE:	SPACE CLASS	SQ. FT.
	JEWELRY & WATCHES	1,046

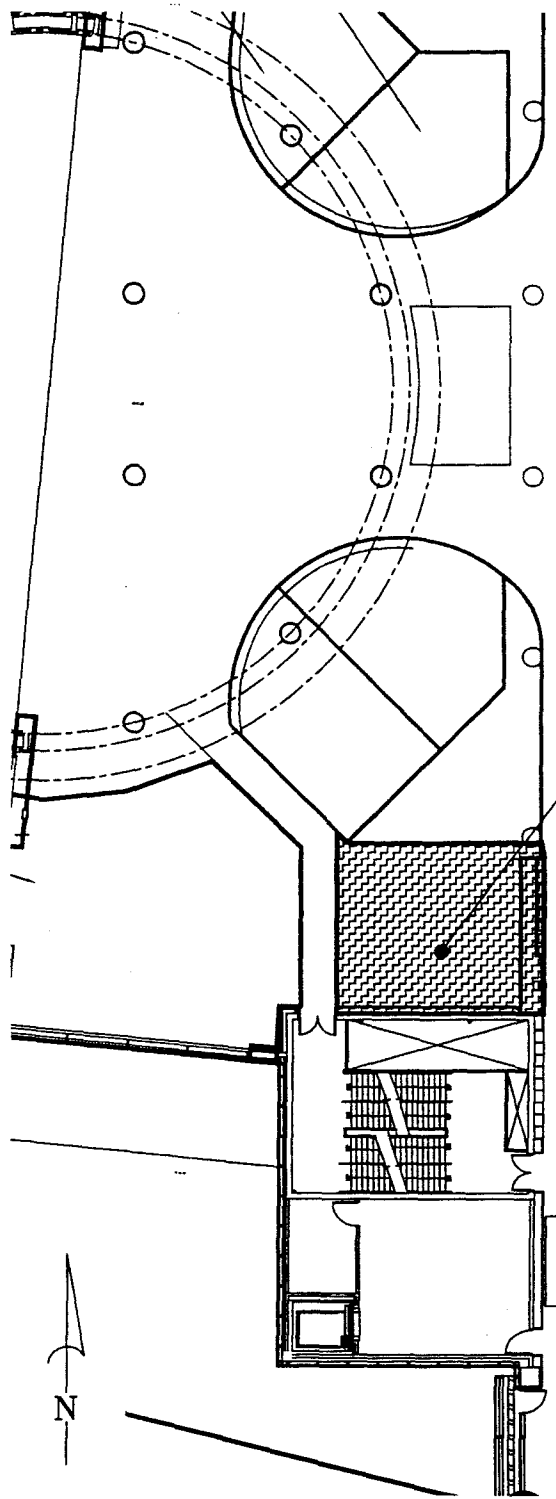
MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE H

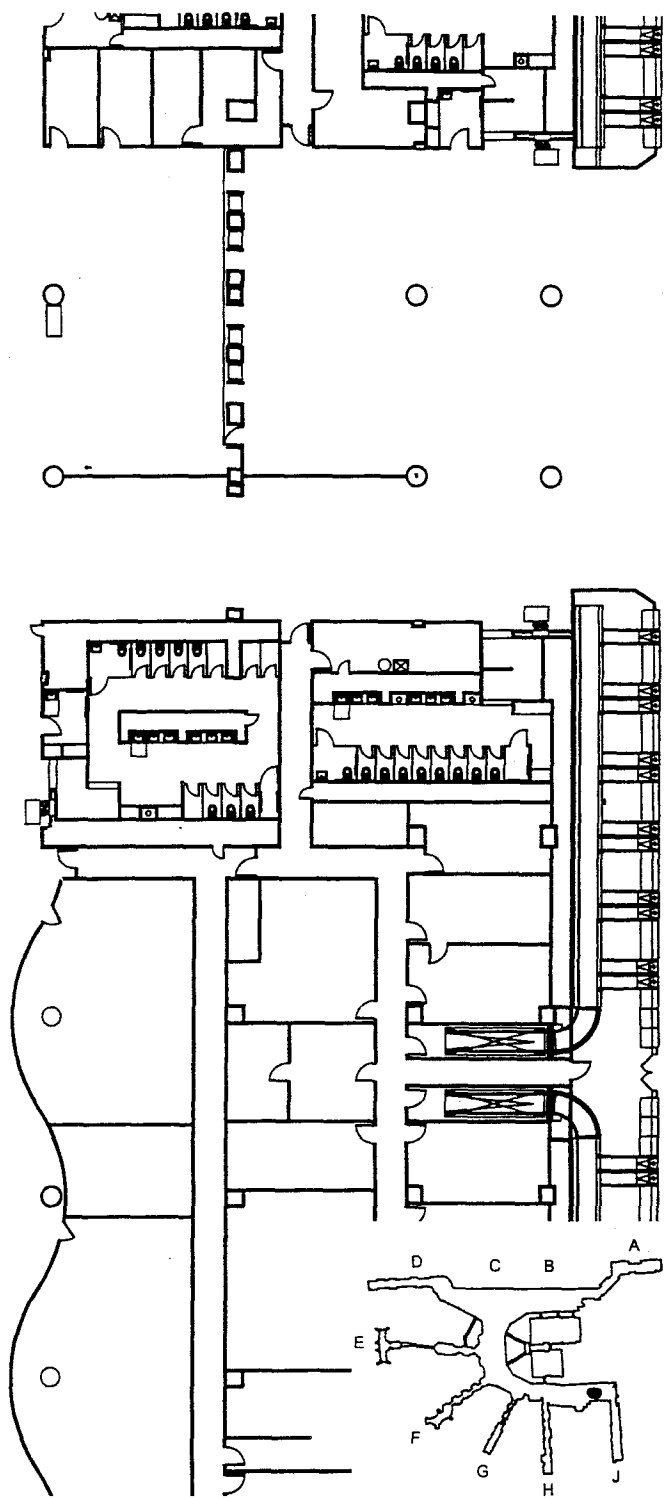
301

Package

6




J2-RT11  
973 S.F.



1 of 2

SOUTH TERMINAL DEVELOPMENT/ 2ND LEVEL

KEY MAP

CODE:	SPACE CLASS	SQ. FT.
	CONSUMER ELECTRONICS	973

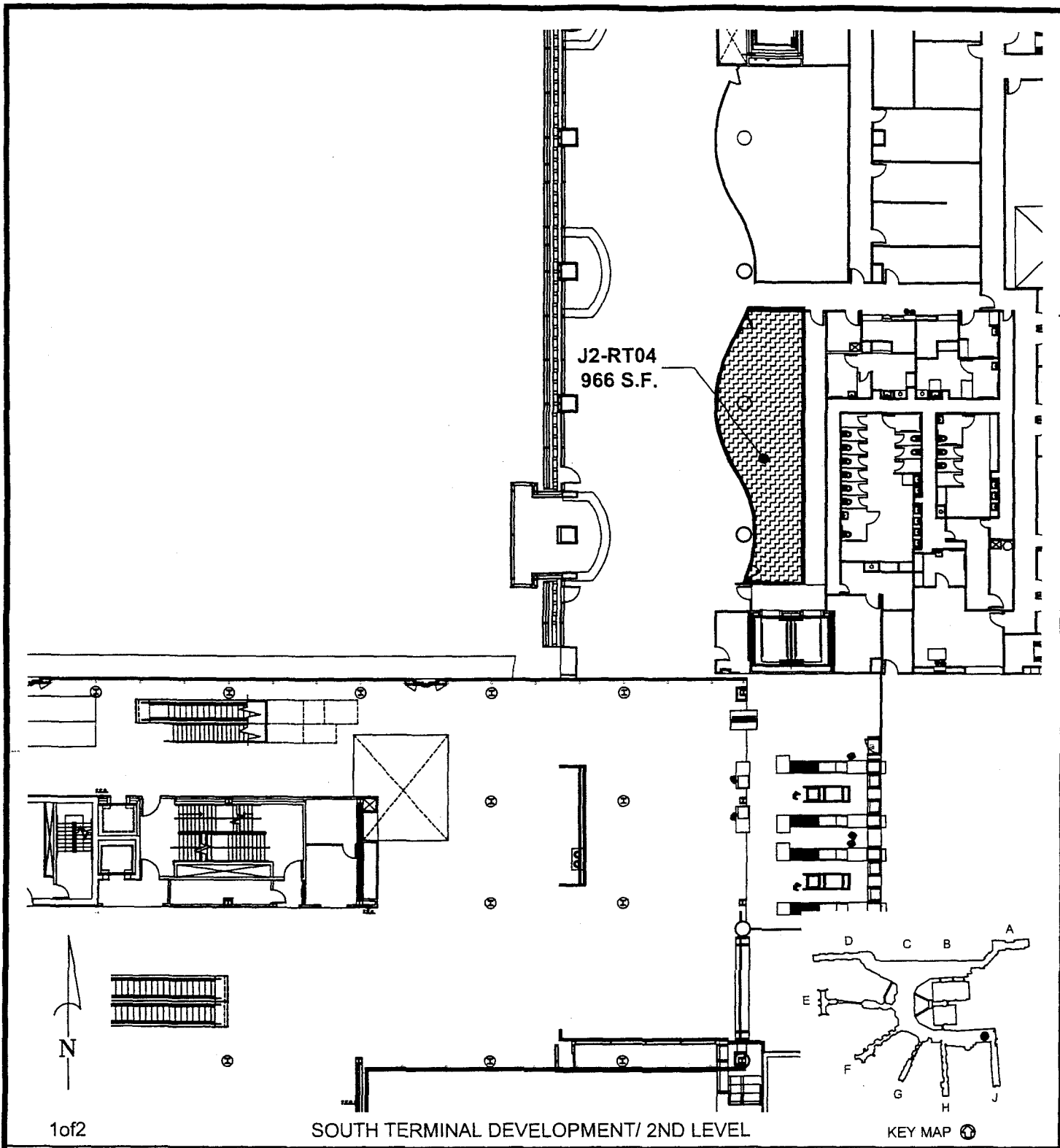
303


MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE J

# Package

7



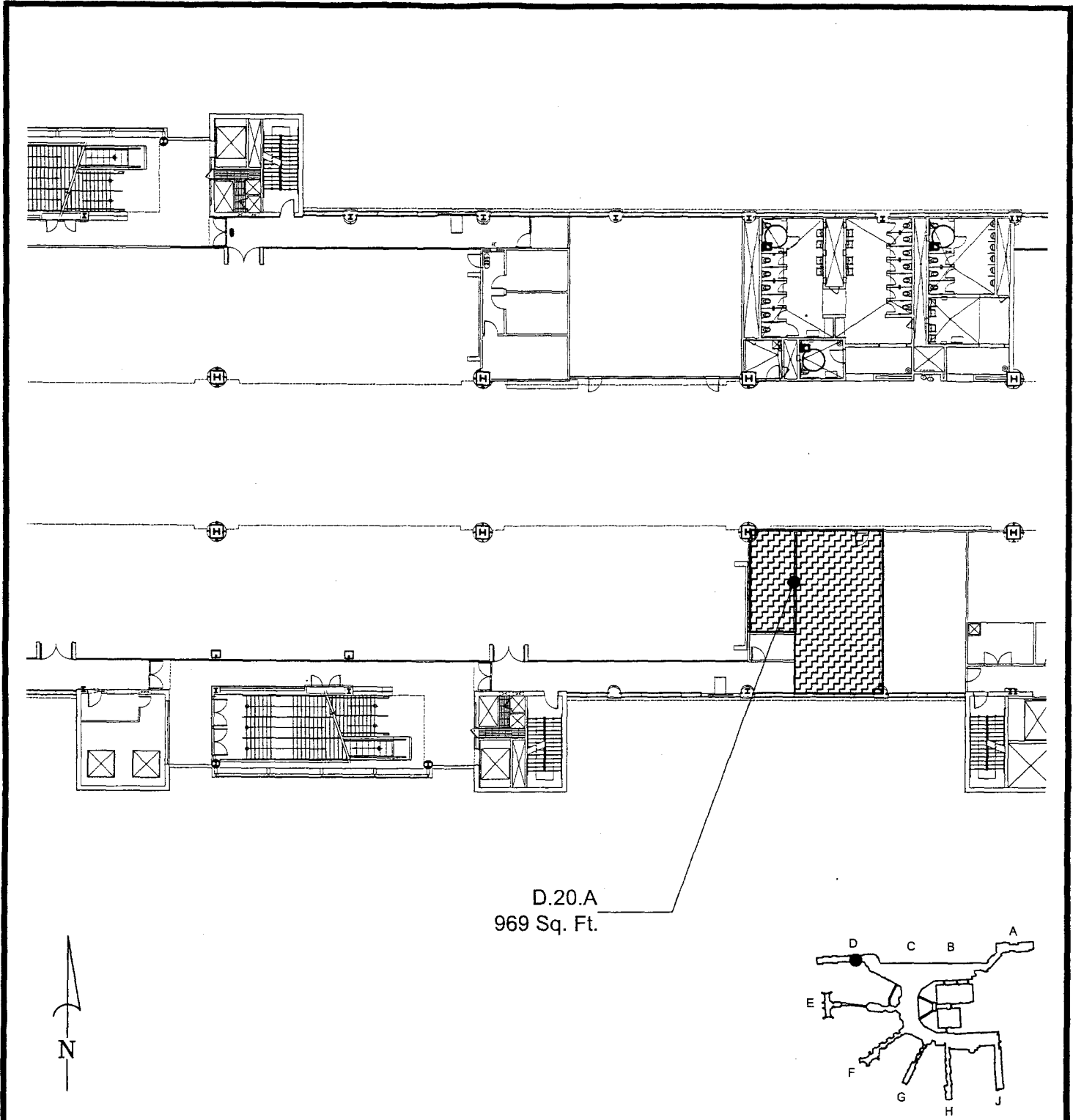
CODE:	SPACE CLASS	SQ. FT.
	FASHION APPAREL & ACCESSORIES	966
305		
SCALE: 1/32" = 1'-0"   EFS #: J2-RT04   DATE: 09-15-05		

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

**EXHIBIT A**  
**PROPOSED RETAIL CONCESSION**  
**ZONE J**


# Package

8



NORTH TERMINAL DEVELOPMENT/ 2ND LEVEL

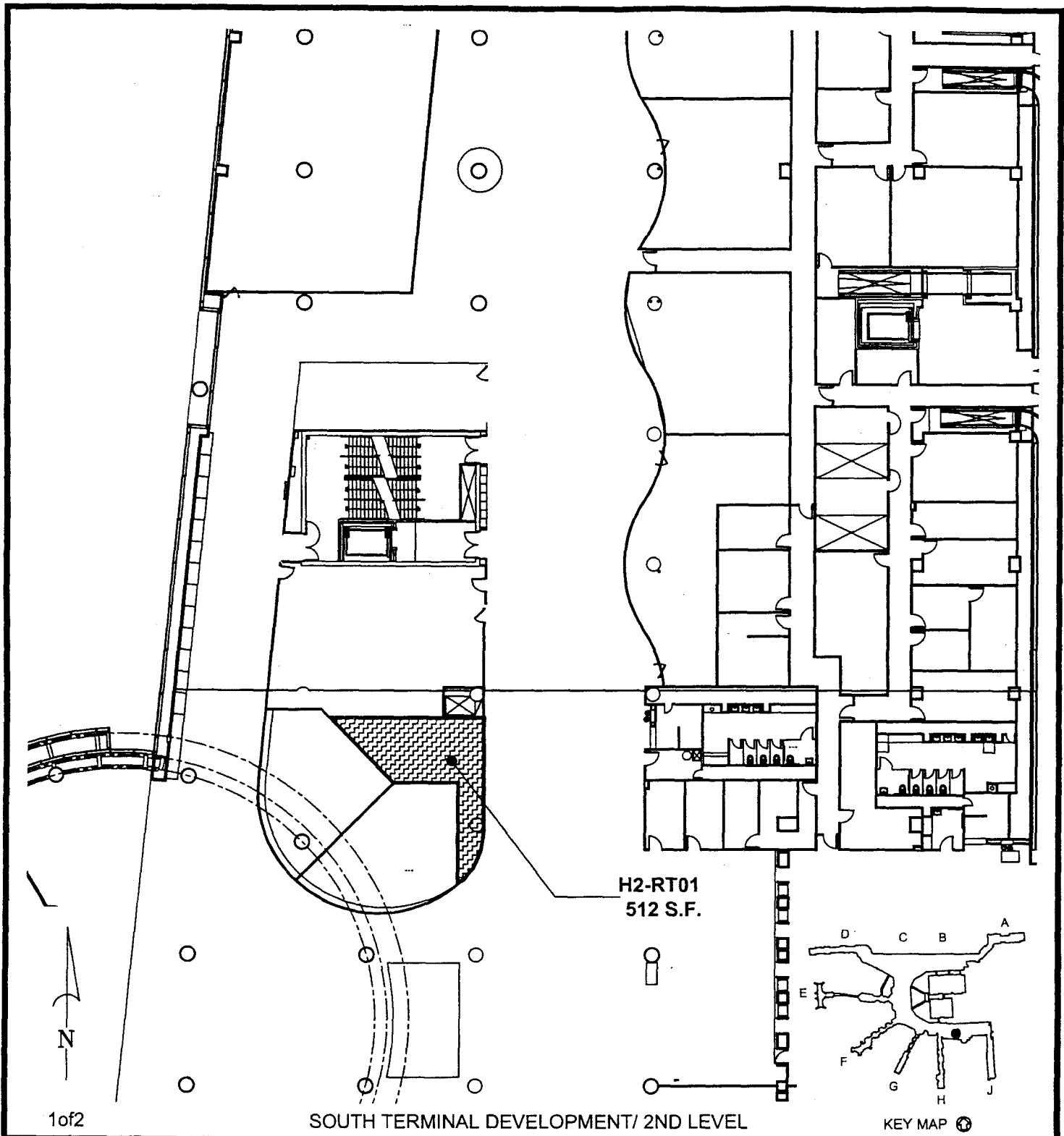
KEY MAP

CODE:	SPACE CLASS	SQ. FT.
	GIFT SPECIALTY SHOP	969

307

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

**EXHIBIT A**  
**PROPOSED RETAIL CONCESSION**  
**ZONE D**



CODE:

SPACE CLASS

SQ. FT.



GIFT SPECIALTY SHOP

512

308

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

# EXHIBIT A PROPOSED RETAIL CONCESSION ZONE H

SCALE: 1/32" = 1'-0"

EFS #: H2-RT01

DATE: 09-15-05

## EXHIBIT B

## SURETY PERFORMANCE AND PAYMENT BOND

By this Bond, We, [CONCESSIONAIRE], as Principal, whose principal business address is [INSERT ADDRESS], as Developer under the contract dated \_\_\_\_\_, 200 , between Principal and Miami-Dade County for the development of the [IMPROVEMENTS] (hereinafter referred to as "Lease and Concession Agreement") the terms of which Lease and Concession Agreement are incorporated by reference in its entirety into this Bond, and We, \_\_\_\_\_, as Co-Principal, whose principal business address is \_\_\_\_\_, as Contractor under the contract dated \_\_\_\_\_, 200 , between Co-Principal and [CONCESSIONAIRE], for the construction of the [IMPROVEMENTS] (hereinafter referred to as "Construction Contract") the terms of which Construction Contract are incorporated by reference in its entirety into this Bond and \_\_\_\_\_, a corporation, whose principal business address is \_\_\_\_\_ as Surety, are bound to Miami-Dade County (hereinafter referred to as "County") in the sum of \_\_\_\_\_ (U.S. dollars) \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal or Co-Principal:

- 1 . Performs all the work under the Construction Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Construction Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Construction Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal or Co-Principal with labor, materials, or supplies, used directly or indirectly by Principal or Co-Principal in the prosecution of the work provided for in the Construction Contract; and
3. Pays County all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that County sustains because of a default by Principal or Co-Principal under the Construction Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Construction Contract; and
4. Performs the guarantee of all work and materials furnished under the Construction Contract for the time specified in the Construction Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Construction Contract; then this bond is void; otherwise it remains in full force.

If no specific periods of warranty are stated in the Construction Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue suits directly with the Principal or Co-Principal seeking damages for latent defects in

**SURETY PERFORMANCE AND PAYMENT BOND (Cont'd)**

materials or workmanship, such actions being subject to the limitations found in Section 95.11, Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Construction Contract or the changes does not affect Surety's obligation under this Bond.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

CONCESSIONAIRE

\_\_\_\_\_  
[CONCESSIONAIRE]

BY:

\_\_\_\_\_  
(President) (Managing Partner or Joint  
Venturer)

CONTRACTOR

\_\_\_\_\_  
(Contractor Name)

BY:

\_\_\_\_\_  
(President) (Managing Partner or Joint  
Venturer)

(SEAL)

**SURETY PERFORMANCE AND PAYMENT BOND (Cont'd)**

COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:

SURETY:

\_\_\_\_\_  
(Copy of Agent's current  
Identification Card as issued by  
State of Florida Insurance Commissioner must be attached) By: \_\_\_\_\_

\_\_\_\_\_  
Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

**EXHIBIT C**

**NOT USED**

Bond No. \_\_\_\_\_

**MAG PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we, \_\_\_\_\_  
\_\_\_\_\_ as Principal, and \_\_\_\_\_  
licensed to do business in the State of Florida as Surety, are held and firmly bound unto Miami-Dade County (Obligee), in the penal sum of \_\_\_\_\_,  
\$, \_\_\_\_\_ (words and figures) of the Minimum Annual Guarantee as required in Section 3.01 of the Lease and Concession Agreement entitled "Minimum Annual Guarantee", for the payment of which sum well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, and successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that whereas by Concession Agreement dated \_\_\_\_\_, Obligee has granted unto said Principal the right to operate an \_\_\_\_\_ at Miami International Airport and more fully described in said Lease and Concession Agreement for a term as set forth in said Agreement, a copy of which is attached, which Agreement is made a part hereof and incorporated herein by reference.

**NOW, THEREFORE**, if Principal, its executors, administrators, successors and assigns shall promptly and faithfully perform the Lease and Concession Agreement, according to the terms, stipulations of conditions thereof, then this obligation shall become, null and void; otherwise to remain in full force and effect.

Provided, however, this bond shall be in full force and effect for the term commencing \_\_\_\_\_ and ending \_\_\_\_\_ but may be renewed annually thereafter by the principal with written consent of the Surety by issuing a Continuation Certificate no later than thirty (30) days prior to the renewal date.

Provided further, however, that regardless of the number of years this bond may be in force, the aggregate liability of the Surety shall not be cumulative and is limited to the stated penal sum.

Provided further, however, that in the event the bond is not renewed, the liability of the Surety shall be limited to the actual damages sustained by the Obligee due to lack of performance of the Principal during the effective term of the bond. The Surety shall not be held liable for any contract period beyond which it consents to in writing, as defined in the Lease and Concession Agreement in Section 3.01 "Minimum Annual Guarantee", and Section 3.08 "Performance Bond for MAG Requirements".

**IN WITNESS WHEREOF**, the above bounden parties have executed this instrument under their several seals, this \_\_\_\_ day of \_\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In The Presence Of:

_____	_____ (Seal)
Witness	By: _____
Witness:	Surety: _____
_____	_____ (Seal)
	By: _____

## **EXHIBIT E**

### **RETAIL CONCESSION PROGRAM MIAMI INTERNATIONAL AIRPORT RETAIL CONCESSIONS DESIGN GUIDELINES**

**(PROVIDED UNDER SEPARATE COVER)**

**TENANT AIRPORT CONSTRUCTION NON-REIMBURSABLE PROJECTS**

and

**TENANT AIRPORT CONSTRUCTION REIMBURSABLE PROJECTS**

Miami Dade County  
Miami Dade Aviation Department  
Miami International Airport  
May 9, 2002

**Tenant Airport Construction Non-Reimbursable Projects (TAC-N)  
Design and Construction Procedures  
EXHIBIT F**

**Glossary of Terms**

A/E	Tenant's State of Florida Registered Architect or Engineer responsible for the design of the project
GSA	General Service Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC/TAC	Miscellaneous Construction Contract/Tenant Airport Construction
MDAD	Miami Dade Aviation Department
NTP	Notice to Proceed
TAC-N	Tenant Airport Construction Non-reimbursable projects
Tenant	Business Partner, Lessee

**General Information**

If a tenant wants to improve or expand a leasehold area, the tenant must first contact an MDAD Properties or Commercial Operations Manager to discuss the improvement terms of the revision agreement if the project is acceptable to MDAD.

The MDAD Properties or Commercial Operations Manager will prepare a "QUICK-CHECK FORM" (with attachments), which will be submitted to the MDAD Development Division Manager and other divisions for review and approval. Special consideration is given to its impact upon other adjacent projects underway or proposed. The attachments that will accompany the "QUICK-CHECK FORM" will include but are not limited to the following:

- a. A completed TAC-N Project Information form, copy attached.

- b. Conceptual drawings/sketches.
- c. Tenant's letter which includes a description of the project, copies of a proposed schedule and cost estimate, plus a statement requesting MDAD to approve the conceptual project for design and construction.

**Procedures-Design and Construction**

1. The MDAD Development Division Manager will assign an MDAD Project Number to the project. If approved, the "QUICK-CHECK FORM" (with attachments) will be submitted to the Facilities Division Manager who will review and assign the project to the MCC/TAC Chief who will then direct the TAC-N Project Manager to monitor the design and construction activities of the project. The TAC-N Project Manager will contact the tenant upon receipt of the project and will forward the TAC-N procedures to the tenant.
2. It is the responsibility of the tenant through its A/E and/or Contractor, as applicable, to:
  - a. Obtain copies of MDAD Record (As-Built) Drawings from the MDAD Technical Support Division by calling 305.876.7057.
  - b. Verify field conditions including but not limited to electrical, mechanical, HVAC, plumbing, water, sewer, structural, connecting points for all utilities/HVAC/fire protection/smoke evacuation, etc.
  - c. Ensure that the design of the project is in compliance with the MDAD Design Guidelines Manuals (MIA Terminal projects only) Guidelines is available on the Internet at ([www.miami-airport.com](http://www.miami-airport.com)).
  - d. Obtain a copy of the MDAD Asbestos Status Report for the project from the MDAD Environmental Engineering Division. Please call 305.876.8326 to request the report. This report is required by the Miami Dade Building Department for permitting and must be submitted along with the application for a building permit and two sets of plans, signed and sealed by the A/E of Record.
  - e. Coordinate schedules and locations for MIA terminal deliveries at the 2nd floor curbside with MDAD Landside Operations Division. Please call 305.876.7086 for coordination.
  - f. Coordinate schedules and construction within the MIA terminal with the MDAD Terminal Operations Division. Please call 305.876.7082 for coordination.
  - g. Coordinate airside accesses requirements with MDAD Airside Operations Division. Please call 305.876.7482 for coordination.
  - h. Coordinate the issuance of MDAD photo ID badges and requirements for orientation regarding airport security with the MDAD Safety and Security Operations Division. Please call 305.869.4028 for coordination.

- i. Coordinate "SHUTDOWN PROCEDURES" with the MDAD Engineering Maintenance Division. Please call 305.876.7477 for coordination.
  - j. Coordinate requirements and specific procedures relating to permitting for DERM, DEP, dewatering excavating, trenching, stockpiling, maintenance and disposal of contaminated material. With the MDAD Environmental and Airport Engineering Division. Please call 305.869.1063 for coordination.
3. The tenant or the tenant's A/E of Record shall:
- a. Submit 10 sets of 100% construction documents to the TAC-N Project Manager for review. Each sheet of the submitted plans shall be identified with a title box that includes the name, address, and telephone/fax numbers of the owner as follows:

Property Owner: Miami Dade Aviation Department  
MDAD Project Manager:

Address: P.O. Box 592075, Miami, Florida 33159

Tel: \_\_\_\_\_

Fax: 305.876.0996

Project Owner/Lessee: \_\_\_\_\_

Tenant's Project Manager: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

The TAC-N Project Manager will submit the sets of construction documents to Consultants and MDAD Staff for a Design Review. This process has a duration period of fourteen (14) calendar days. The Reviewers will fax any issues/comments to the tenant's A/E of Record and to the TAC-N Project Manager within fourteen (14) calendar days of receipt of the plans. The tenant or the tenant's A/E of Record shall confirm receipt of Review Comments with the TAC-N Project Manager on the fifteenth (15) day.

- b. Address the Reviewer's issues/comments to the satisfaction of both parties by fax, meetings, telephone conversations, etc.
- c. Revise the construction documents to reflect the changes required by the Design Reviewers. Submit three sets of 100% construction documents, one (1) of which must be signed and sealed by the tenant's A/E of Record. Reviewers must sign the 100% Back Check form, and return it to the A/E and TAC-N Project Manager.

The TAC-N Project Manager will review the submittals. The MCC/TAC Chief will then provide the "Letter of Concurrence" to the tenant in order to apply for a building permit for its project. This letter is valid for a period of sixty (60) calendar days from the date of issuance. If the tenant or his A/E of Record has not applied for a building permit within the sixty (60) calendar days, the Letter of Concurrence will have to be reissued.

- d. Provide the Miami Dade Building Department located at Building 5A, 4th Floor, MIA, with a Building Permit application, the TAC-N Letter of Concurrence, a copy of the MARC Report (if required) and two (2) signed and sealed 100% permit sets of the project construction documents. For additional information, please call 305.869.1363.
  - e. The TAC-N Project Manager will advise the tenant of the Miami Dade GSA, Risk Management Division's insurance requirements. Prior to commencement of construction, provide the TAC-N Project Manager copies of all Certificates of Insurance as required.
  - f. Submit copies of the Construction Schedule, Design and Construction Budget (Update), and Building Permit to the TAC-N Project Manager prior to commencement of construction.
4. Pre-Construction and Construction Meetings

The TAC-N Project Manager will determine, based on the complexity and magnitude of the project, if a pre-construction meeting is required and if regular construction meetings will be required. If required, the frequency of the construction meetings will be established based on the complexity and duration of the project. Attending the meetings will be the tenant's A/E and contractor, the MDAD representative and others as may be required. If no regular scheduled construction meetings are held, the TAC-N Project Manager or his designee will periodically visit the jobsite. The permit set of drawings is required to be kept and available on the construction site at all times.

5. Project Close-Out

If required, a walk through is scheduled and coordinated through the TAC-N Project Manager. It is the responsibility of the tenant to submit copies of the following, as applicable, to the TAC-N Project Manager:

- a. The signed-off building permit (inspections) within 24 hours of its issuance.
- b. Certificate of Occupancy or Completion within 24 hours of its issuance.
- c. Warranties, manuals, instructions, etc., of any equipment that will be maintained by MDAD.
- d. Record Drawings (As-Built drawings) on Bond paper, two (2) signed and sealed set prepared by the tenant's architect of Record within thirty (30) days from the issuance date of the Certificate of Occupancy or Completion.
- e. Depending upon the size or complexity of the project, the tenant may be requested to provide the TAC-N Project Manager with As-Built Mylar's, 35mm aperture cards or digital files for the project.

The TAC-N Project Manager and the tenant will closeout the project. All documents must be received by the TAC-N Project Manager from the tenant prior to project closeout.

**TENANT AIRPORT CONSTRUCTION REIMBURSABLE PROJECTS****PURPOSE**

Provide details for the initiation and management of a Tenant Airport Construction Program reimbursable project.

**DEFINITIONS**

FAA	Federal Aviation Administration A/E Tenant's State Registered Architect or Engineer responsible for the design of the project.
BCC	Board of County Commissioners
GSA	General Services Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC/TAC	Miscellaneous Construction Contract/Tenant Airport construction
MDAD	Miami Dade Airport Aviation
NTP	Notice to Proceed
PM	Project Manager
TAC-N	Tenant Airport Construction Non- reimbursable projects
Tenant	Business Partner, Lessee

**INSTRUCTION****GENERAL INFORMATION****Summary of Department Process for Design and Construction of TAC-R Projects**

When an airport tenant wishes to improve or expand a leasehold area, the tenant must contact the MDAD Manager, Properties and Commercial Operations to discuss the proposed improvement or expansion. The Manager, Properties and Commercial Operations or designee determines whether the proposed design and construction will be a reimbursable or non-reimbursable project.

If the determination is that the proposed design and construction are reimbursable, the tenant must submit a letter to MDAD requesting approval to design and construct the project, detailing the proposed construction and providing a proposed schedule and cost estimate.

The Manager, Properties and Commercial Operations or designee prepares an instruction and forwards it to the MDAD Manager, Planning, the MDAD Design Chief, the MDAD Manager, Maintenance Engineering, the MDAD Manager, Terminal Facilities, and others as appropriate, for review and tentative approval.

If tentative approval is denied, the tenant is notified through MDAD Manager, Properties and Commercial Operations.

If tentative approval is given, the tenant is so advised through MDAD Manager, Properties and Commercial Operations and is invited to a meeting with a project conceptual review team which includes the MDAD Manager, Planning the MDAD Design Chief, the TAC-R chief to discuss the design process, bid and award process, construction and close out process. These discussions will include cost and schedule, and the identification of a TAC-R Project Manager.

There are standard MDAD procedures for the above named processes. However, dependent on the complexity, size, location and cost of the project, the conceptual review team may, through the TAC-R chief, waive certain aspects of these standard procedural requirements.

**Procedures for Design and Construction**

design of the project will entail the Selection of an Architect/Engineer. The procedures for this activity are outlined in MDAD Procedure FD2-005.

n selection, the A/E will be required to produce the following:

- (a) A Planning Book in accordance with MDAD Procedure FD1-040-P
- (b) A Project Book in accordance to MDAD Procedure FD1-050-P
- (c) Design Documents in accordance with MDAD Procedure FD3-007-P
- (d) Design includes Contract Formation in accordance with MDAD Procedure FD4-040-P3.

n satisfactory completion of the design process, the project shall be bid and awarded for construction in accordance with MDAD Procedure FD4-011-P

satisfactory completion of the project is dependent on inspections consistent with MDAD Procedures for Substantial Completion and Beneficial Occupancy as outlined in MDAD Procedures FD5-195-P

n satisfactory completion of item (4) above the project will be closed out accordance with MDAD Procedures FD5-245-P

Project Manager shall be mindful of the fact that the above core MDAD Procedures with references to other Procedures together form the broad spectrum of management structures for the project.

EXHIBIT G

Page 1 of 4

Sample Management Letter

**Independent Auditor's Report**

Board of Directors  
XYZ Corporation

In planning and performing our audit of the Schedule of Gross Revenues and Percentage Fees Paid to the County of XYZ Corporation for the year ended \_\_\_\_\_xx, 20xx, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing our opinion of the Schedule of Gross Revenues and Percentage Fees Paid to the County and not to provide assurance on the internal control structure. Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under the standards established by the American Institute of Certified Public Accountants.

A material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the Schedule of Gross Revenues and Percentage Fees Paid to the County being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. However, we noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defines above.

This report is intended solely for the information and use of the Board of Directors and management of XYZ Corporation and Miami-Dade County, Florida and should not be used for any other purpose.

**ABC & DEF, CPA's**  
\_\_\_\_\_xx, 20xx

EXHIBIT G

Page 2 of 4

Sample Audit Report

**Independent Auditor's Report**

Board of Directors  
XYZ Corporation

We have audited the accompanying Schedule of Gross Revenues and Percentage Fees Paid to the County (as defined in the Lease and Concession Agreement between Miami-Dade County Florida and XYZ Corporation) of XYZ Corporation for the year ended \_\_\_\_\_ xx, 20xx. This schedule is the responsibility of XYZ Corporation's management. Our responsibility is to express an opinion on this schedule base on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Gross Revenues and Percentage Fess Paid to the County is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides basis for our opinion.

In our opinion, the Schedule of Gross Revenues and Percentage Fees Paid to the County referred to above presents fairly, in all material respects, the gross revenues of XZ Corporation for the year ended \_\_\_\_\_ x, 20xx and the related fees paid, as defined in the Lease and Concession Agreement referred to in the first paragraph.

This report is intended solely for the information and use of the Board of Directors and management of XYZ Corporation and Miami-Dade County, Florida and should not be used or any other purpose.

ABC & DEF, CPA's  
\_\_\_\_\_, xx, 20xx

EXHIBIT G

Page 3 of 4

Sample Compliance Letter

**Independent Auditor's Report**

Board of Directors  
XYZ Corporation

We have audited, in accordance with generally accepted auditing standards, the Schedule of Gross Revenues and Percentage Fees Paid to the County of XYZ Corporation for the year ended \_\_\_\_\_ xx, 20xx and have issued our report thereon, dated \_\_\_\_\_ xx, 20xx. We have not performed any substantive audit procedures beyond the date of our report on the Schedule of Gross Revenues and Percentage Fees Paid to the County. Accordingly, this report is based on our knowledge as of that date and should be read with that understanding.

In connection with our audit, nothing came to our attention that caused us to believe that XYZ Corporation failed to comply with the term of the Lease and Concession Agreement with Miami-Dade County, Florida insofar as they relate to the Company's book of accounts, records and reports. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance.

This report is intended solely for the information and use of the Board of Directors and management of XYZ Corporation and Miami-Dade County, Florida and should not be used for any other purpose.

ABC & DEF, CPA's  
\_\_\_\_\_ xx, 20xx



# **EXHIBIT H**

## **EXECUTED AFFIDAVITS AND CONDITION OF AWARD CERTIFICATES**

**(Documents will be  
provided as part of the  
executed Agreements)**

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## EXHIBIT I

**MONTHLY REPORT OF GROSS REVENUES**(Due on or before the tenth (10<sup>th</sup>) calendar day following the end of each month)

MONTH OF: \_\_\_\_\_ YEAR 20\_\_\_\_

To: Miami-Dade Aviation Department  
P. O. Box 592616  
Miami, Florida 33159-2616  
Attn: Finance Division

From: Company Name  
Address  
City, State, Zip Code  
Lease No.

	Location ID No.:	Location ID No.:	Location ID No.:
Gross Revenues	_____	_____	_____
% Fee Rate	_____	_____	_____
Total % Fee	_____	_____	_____
Less: Monthly Rent	_____	_____	_____
Less: Monthly Minimum Guarantee	_____	_____	_____
% Fee Due in Excess of MR and MMG	_____	_____	_____

Payment included in Check No.: \_\_\_\_\_ Amount Paid: \_\_\_\_\_ Dated: \_\_\_\_\_

I hereby certify that the above statement is true and correct

\_\_\_\_\_  
Signature\_\_\_\_\_  
Title\_\_\_\_\_  
Date

\*The Department reserves the right to modify this form at any time.

**EXHIBIT J****MIAMI INTERNATIONAL AIRPORT  
PROHIBITED ITEMS LIST**

The following list is to advise you of those items, which are not allowed in the sterile area at Miami International Airport as of November 15, 2002.

Ammunition	Large heavy tools (wrenches, pliers, etc)
Automatic Weapons	Mace
Axes	Martial arts device
Baseball Bats	Meat Cleavers
BB Guns	Metal scissors with pointed tips
Billy Clubs	Numchucks
Blackjacks	Pellet guns
Blasting Caps	Pepper Spray
Bows and Arrows	Pistols
Box cutters	Plastics explosives
Brass Knuckles	Pool cues
Bull Whips	Portable power drills
Cattle Prods	Portable power saws
Compressed air guns	Razor blades (not in a cartridge)
Corkscrews	Replica weapons
Cricket Bats	Revolvers
Crow Bars	Rifles
Disabling Chemicals or gases	Road Flares Sabers
Dynamite	Sabers
Fire Extinguishers*	Screwdrivers
Flare Pistols	Shot guns
Golf Clubs	Ski Poles
Gun Lighters	Spear guns
Gun Powder	Starter pistols
Hammers	Straight razors
Hand grenades	Stun guns/shocking devices
Hatches	Swords
Hockey Sticks	Tear gas
Ice axe/Ice Pick	Throwing stars
Knives, including Religious, Hunting (any length and type except round blade butter and plastic cutlery)	Toy transformer robots (forms toy gun)
Kubatons	Toy weapons

\*Except as authorized by local fire codes

\*\*Items are subject to change

**EXHIBIT K**

**MIAMI-DADE AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT  
COMMERCIAL OPERATIONS**

**COMMERCIAL OPERATIONS  
TENANT HANDBOOK MANUAL**

**March 2004**

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## I. WELCOME

Welcome to the Miami International Airport family:

Miami International Airport is a family of dedicated Aviation Department county employee staff, its vendors, consultants, and Concessionaires. We number in the thousands and work closely together every day to achieve the four cornerstones upon which our mission is based: Safety and security, economic viability, customer service, and passenger service.

This standard of operations manual has been created to assist you in identifying our expectations of your inclusion into our Airport family. We believe we can meet the highest expectations of our passengers and airport patrons for an Airport, which enjoys the mixture of international and domestic passenger base but it requires your attention to detail to make this happen.

We look forward to working with you to achieve not only the standards included in this manual, but to excelling beyond these basic standards.

We welcome your input and wish you well in your new business here at the Airport.

Sincerely,

Jose Abreu, P.E. Director, Miami-Dade  
Aviation Department

JA:par

## **II. INTRODUCTION**

This Standards of Operations Manual is constructed so that it addresses the events that will usually transpire as your business embarks on a relationship with the Miami International Airport.

The Lease that exists between the Concessionaire and the County is the primary legal document that defines allowable activities and conditions within the leasehold premises. Review of the Lease is recommended for further definition of activities, concession and public boundaries, and other operating rights.

### **A. Vision**

The MIA concessions program is a world-class retailing experience for its diverse passenger mix of the culturally diverse, cosmopolitan South Florida region, and a multi-continent international gateway by providing a wide variety of international, national and local brands that offer fair and varying price points, and innovative store designs, all within a safe, vibrant shopping environment.

### **B. Commercial Operations Program Goals**

A commitment to balance competitively priced high quality goods and services with needed passenger services and revenue to the Airport recognizing the investment by the concessionaires and achievement of our DBE goals.

### **C. Commercial Operations Program Objectives**

To achieve the mission/vision and goals, commercial operations' objectives are to:

- Enhance the image of MIA as a world class airport which reflects the cosmopolitan and international nature of the community
- Enhance customer service and satisfaction by improving product choice, price points, and customer service
- Optimize sales/transactions and revenue to the Airport.
- Integrate design and location of commercial operations within the infrastructure of the Airport for passenger convenience
- Balance national, regional and local commercial operations and concessions with DBE representation throughout the terminal

### **D. Terminal Overview**

The existing Miami International Airport terminal is currently configured in a horseshoe with Concourses from A to H. Security checkpoints are arranged at the entryway to each of the concourses.

## INTRODUCTION (Continued)

A \$4.8 billion Capital Improvement Program is underway to create three terminals; the North, Central and South Terminals as described below:

North Terminal will create about 3.2 million square feet of space to accommodate the movement of aircraft, baggage and people for an international connecting hub operation. Approximately 174,000 square feet of concession space is split between food/beverage and retail. The look of the retail will be guided by our Concessionaire Design Criteria Handbook which will:

- Create a world class retail environment
- Utilize the full height of the concourse to create excitement for concessions
- Maximize the quality of presentation to third level corridors
- Compliment the architecture of the terminal with its fixtures and storefronts
- Use lighting and signage to create drama and identity
- Be outfitted with quality materials that integrate with the terminal design.

The North Terminal has four phases with the first phase in Zone D planned to open in May 2004 and is planned to be completed in 2007.

Central Terminal: The Central Terminal is the existing terminal, which includes Concourses E, F, and G. Plans are for the G Concourse to eventually be closed down. The Retail concessions include 38 stores in approximately 40,000 square feet in a landside retail program, which is anticipated to be built out by the last quarter in calendar year 2004.

South Terminal: The South Terminal is now under construction, which includes about 50,000 square feet of new concession space, the existing H Concourse and a new J Concourse.

Miami International Airport had approximately 14.7 million passengers in FY 02-03 with approximately 7 million international passengers.

### **III. GETTING STARTED AT MIA**

While it is exciting and fun to work at Miami International Airport, there are some differences from working in other retail environments. This section will address some of those differences and some of the actions necessary because of those differences. We will guide you through some of the processes needed to get your employees, started working with us at MIA.

#### **People Concerns – Before Beginning Employment**

##### **1. Employee Parking**

###### **A. Availability**

The airport employee parking lot is available to employees of companies that lease space in the terminal building and have been authorized by the Aviation Department to utilize the employee parking facility. Employees may park in the employee parking lot only while on duty at the MIA terminal building.

###### **B. Location and Transportation**

The employee parking lot is located approximately 1 ½ miles southeast of the main terminal building. It can be accessed through LeJeune Road at N.W. 14<sup>th</sup> St. or through Perimeter Road at 15<sup>th</sup> Street. Shuttle buses provide 24-hour transportation to and from designated locations on the departure level of the terminal building with approximate headways of 5 minutes during peak times and 15 minutes during non-peak times.

###### **C. Parking Decal Information**

Employee parking decals are issued in 4, 8, or 12-month increments. Companies that will be paying for employee parking decals can establish an account and be invoiced monthly by contacting the Finance Division. Employees can pay for their parking at the Decal Section. The Decal Section is located on the ground floor of the Dolphin Garage, and is open Monday-Friday except holidays from 8:00 a.m. to 5:00 p.m. Contact the Decal Section for current employee parking rates. To register your company and establish authorized requestors for your company, please obtain sample letters from the Decal Section (tel. number: 305- 876-7567).

###### **D. Parking Lot Safety and Security**

- Access to the employee parking lot is restricted to vehicles with a valid employee parking decal and employees with valid MIA identification badges or airport authorized company identification badges. Family members/friends traveling in the same vehicle will be denied entry to the lot if they do not have a valid MIA or company I.D.
- Employees must have a valid MIA or airport approved company identification badge to ride the employee shuttle bus between the employee parking lot and the terminal building. Family members/friends are not allowed to ride the employee shuttle bus.

- There are emergency telephones located at each bus shelter in the employee parking lot. These phones may be used to report personal safety issues or non-emergency situations such as the need for motorist assistance.

#### **E. Abuse of Parking Privileges**

- Employee parking decals must be permanently affixed on vehicle for which it was issued and can only be used by authorized employee.
- Parking in the employee parking lot is a privilege and may be revoked at any time for failure to comply with established procedures.

### **2. Badging**

The Concessionaire shall be subject to all Departmental requirements and FAA mandates pertaining to the issuance of airport identification badges, including, but not limited to employee completion of SIDA training conducted by the Department and background checks, as required by the FAA Unescorted Access Privilege Rule. The Concessionaire shall pay, or cause to be paid, to the Department such nondiscriminatory charges, as may be established from time to time, for lost or stolen ID badges and those not returned to the Aviation Department. The Concessionaire will be required to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data may include the fingerprinting of employee applicants for such badges.

All airport employees working need to be badged before work commences. Our badging office is located under the Dolphin Parking Garage and is **generally** open during business hours to accommodate users.

Badges must be displayed at all times. All airside employees must participate in additional training for this access.

The badging department has its own rules and regulations with which the concessionaire must become familiar.

### **3. Hiring New Employees**

From time to time the Department assists concessionaires with their hiring by organizing a job fair. Contact the Employees Relations Department for more information about this opportunity.

The Concessionaire should familiarize itself with the Agreement for any required staffing levels prior to concluding hiring processes.

#### **4. Employee Orientation**

All airport employees (including Concessionaires) will need to be scheduled for an employee orientation with the Airport to receive SITA training and customer service training (which is included in the orientation time). Please allow 90 minutes for this training, which must be accomplished prior to the employee beginning work at the Airport.

#### **B. Other**

##### **1. Setting up Utilities**

The cost of all utilities used or consumed on the Premises shall be borne by the Concessionaire. Unless the Premises are provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for the utilities on the Premises as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. The Department encourages the Concessionaire to provide and install meters for utilities used at the Concessionaire's expense. See your Agreement for further detail on payment to MDAD for utility charges.

Other utilities used by the Concessionaire including telephones and telephone service hook-up, data lines and additional electrical and communications services are to be arranged for and paid by the Concessionaire. The Airport provides these type of services through its Information Technology Shared Tenant Services.

##### **2. Use of Wireless Technologies**

Any approval by the Department and subsequent installation by any Concessionaire, of a wireless network would be granted only with the explicit understanding that the Concessionaire agrees that the system be transitioned over to any future network once installed. Note that any and all costs, both one time and recurring, to be incurred as a result of the required transition to any future network shall be the responsibility of the concessionaire.

##### **3. Banking Procedures**

The bank is located on the fourth level of Concourses A and is equipped with a night depository, which is available to on-site Concessionaires. To arrange for depository services, the Concessionaire should contact the Bank to discuss procedures and fees.

It is critical that Concessionaires implement a policy and provide professional guidance for cash handling, ensuring that those staff tasked with making deposits do so in the safest manner possible.

Concessionaires are responsible for arranging procedures to ensure that all stores have the appropriate amount of change on hand.

#### **4. Hours of Operation**

All units have specific hours set that the unit is to be open and serving the public. On site personnel are responsible for knowing what their store operating hours stipulate. In some cases, depending on airline schedules caused by weather or other delays, the store may be required to stay open beyond required hours. Procedures need to be in place to keep the store open and operating during such events.

The store must have all products and services available the moment it opens. This means, for example, that the coffee must be prepared and ready to serve prior to the actual opening time the store must also keep all products available up until the time the store officially closes. It is not acceptable for store employees to begin to remove and clean the store until the actual closing time of the store.

## **IV. STANDARD AIRPORT PROCEDURES**

### **A. Improvements to Premises**

#### **1. Conditions for Permits**

Airport businesses must comply with their contractual requirement to obtain the written consent of MDAD to carry out any alterations to MDAD property. This includes what might be constructed as "minor" additions and deletions like an electrical outlet.

The permit process is designed to ensure that construction is compatible with present and future airport facilities, responsibilities are appropriately assigned, ensure compliance with other jurisdictions' requirements, meet MDAD standards for design, and assist Concessionaires with the timely and safe completion of their projects.

#### **2. Permit Application Procedure**

Concessionaire must first contact MDAD's Commercial Operations Division with any plans for site improvements, alterations or construction for preliminary plan approval.

The design criteria manual for each terminal details the submittal requirements and permit process.

### **B. Storage**

#### **1. Designated Storage Areas**

Concession storage space may be leased through MDAD Commercial Operations Division and is designated in the Agreement. These storage areas are provided for activities related to the Concessionaire's doing business at the airport including storage, display, overstock or office uses. MDAD will make every effort to satisfy individual concession storage needs, dependent on the availability of suitable space.

#### **2. Unapproved Storage**

Hazardous, combustible or flammable materials, and storage of merchandise outside or adjacent to Concessionaire's retail premises or storage area is not permitted. Storage of materials, products, or trash that blocks access to fire safety equipment, doors and other access points is also prohibited. Concessionaires that consistently abuse storage privileges will be noticed and required to clean premises or will be billed for all associated costs required to clean up or remove the unapproved materials attributed to their business.

### **3. Fire Safety in Storage Areas**

Concessionaires using storage areas must be aware of these common storage problems and must correct them to ensure fire safety:

- Storage too close to sprinkler heads.
- Improper storage of trash, boxes, oily rags, etc. These items are better removed to disposal or recycling receptacles provided for Concessionaires.
- Improper storage of flammable and combustible liquids and aerosols.
- Blocking of exit-ways and fire equipment.

### **4. Damage to Storage Areas**

Storage rooms and the access to those rooms are the property of MDAD. Concessionaires found to be consistently causing damage to MDAD property will be noticed and may be billed for repairs following review and discussion with MDAD as necessary.

## **C. Changes in Price and Product Offerings**

### **1. Street Pricing**

The Concessionaire shall not charge prices in excess of one hundred ten percent of Street Prices as defined in the Agreement. The Concessionaire will be required to submit examples of pricing periodically as indicated in the Lease Agreement. MDAD will monitor Concessionaire prices to ensure compliance.

Concessionaires are required to submit a detailed list of all services and items (and their corresponding prices) offered in their assigned premises.

Prior to adding new items or increasing prices, Concessionaires are required to inform the airport and to seek written approval from the Department.

### **2. Menu and Product Offerings**

MDAD and the Concessionaire agrees to offer a set of products and services approved prior to the opening of the location.

Any sales by the Concessionaire of services, products, or items not specifically approved in its Agreement shall constitute a default. In the event of such default, the Concessionaire will discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure to discontinue such sales shall be grounds for termination of the Agreement.

To request that an additional product be sold, the Concessionaire must submit in writing for approval to the Commercial Operations Division the request inclusive of the product name and suggested price along with the required support for the establishment of the proposed price.

## **D. Terminal Maintenance and Operational Issues**

### **1. Maintenance Services**

MDAD's Facilities Department has, as its highest priorities, the repair and upkeep of the airfield, passenger service and common and public areas. While the concessionaire, as delineated in its lease, is responsible for maintaining its premises, MDAD is available to assist Concessionaires with other repairs and maintenance-related activities as much as manpower and work scheduling will allow. The Maintenance Department has established fees for these services, which will be billed directly to the Concessionaire.

### **2. Maintenance Responsibilities**

#### **A. MDAD Responsibilities**

MDAD Maintenance Department is responsible for the maintenance, repair and upkeep of the following items found within the Concessionaire's premises:

- Exterior window cleaning on the airfield;
- Emergency spot lights;
- Broken lock or key in storefront rolling grill;
- Electrical system supplied to the store (Concessionaire responsibility begins at outlet);
- And HVAC system

#### **B. Concessionaire Responsibilities**

Concessionaires are expected to maintain their premises in good repair and keep them in a clean condition and orderly appearance. Concessionaires are responsible for any other upkeep and repair within their leasehold, including but not limited to windows, both inside and out, flooring, spot lights; display case and spot and window lighting; carpet; fixtures, and any

equipment or custom made features of the premise. Concessionaires must also arrange for their own janitorial service.

Concessionaires also are responsible for their own extermination, which must be coordinated with the Airport

### **3. Contracting Maintenance Work**

Concessionaires who desire maintenance work can do so by:

- Contracting with an outside vendor who is capable of completing the desired maintenance and repair to the satisfaction of MDAD and to the Concessionaire; or
- Contracting with MDAD Facilities Department for those items outside MDAD's regular maintenance responsibilities.

#### **A. Contracting with Outside Vendor Services**

Concessionaires may hire service providers such as housekeeping, extermination or telecommunications without prior MDAD approval.

However, prior to any work, a permit must be issued. Concessionaires must contact Commercial Operations to obtain the proper permit forms and approval to hire any contractor who may impact airport operations such as electricians, phone repair, plumbers, etc.

Vendor must meet or exceed the original materials and workmanship and conform to any federal, state or local regulations. All work shall be subject to inspection by MDAD.

#### **B. Contracting with Airport Facilities**

Contact the MDAD Facilities (305-876-7311) to request a work order. Requests made 24 hours in advance of need are appreciated. For non-emergency requests, allow a maximum turn-around time of two weeks. Concessions contracting with the Maintenance Department will be billed on an hourly basis for manpower and the cost of supplies.

When requesting maintenance services, Concessionaires should identify the item in need of attention and time frame for completion. Efforts will be made to meet the request in a timely manner, depending on the department's manpower level and workload. Concessionaires should limit their requests to the Maintenance Department for maintenance and repair only, and not for making improvements or involving new construction.

#### **4. Emergency Maintenance**

The Facilities Department will respond to emergencies as a priority. Concessionaire should make clear in its request to the dispatch that an emergency situation exists for immediate attention. Examples of emergency maintenance requests are broken water pipes or any other uncontrollable leakage, broken display window glass, inoperable entry gate, etc.

#### **E. Delivery Procedures**

##### **1. Delivery Hours**

Airport businesses may take deliveries of products, supplies, etc. from 7:00 A.M. to 8:00 P.M. MDAD reserves the right to schedule deliveries or institute a common warehouse system with a common logistics fee to support the system if it becomes necessary.

##### **2. Terminal Side Delivery**

###### **2.A Deliveries Terminal Curbside**

- Delivery hours are from 7:00 p.m. to 8:00 a.m.
- Landside staff will determine drop off locations to minimize disruption to traffic.
- All vehicles must be attended. This is a Transportation Security Administration (TSA) mandate.
- Drivers must be able to provide proper identification and manifest of deliveries.
- Vehicle is subject to search.
- Location and delivery times may be subject to change due to security or operational requirements.

###### **b. Vehicle Identification for Delivery Zones**

All vehicles utilizing the loading and delivery zones in front of the terminal as described above must be adequately marked with company name and/or logo on both sides of the vehicle.

Painted, exterior magnetic, or interior static cling plastic signs attached to the side windows are acceptable.

Signs should look professional done with minimum dimensions of 8 1/2" by 11".

###### **c. Delivery Zone Parking Restrictions (Time)**

Use of loading and delivery zones is restricted to thirty (30) minutes. If a vendor anticipates that they will be actively loading or unloading for more than 30 minutes, they must notify Landside Operations at 305-876-7441.

**d. Delivery through Terminal Building**

Efforts should be made to avoid using public areas of the terminal for large quantity deliveries during peak hours. If supplies must be transferred through the public portions of the terminal, these pickups/deliveries should be scheduled during non-peak aircraft arrival and departure times.

Common carriers such as Federal Express, UPS or Airborne Express are authorized to bring shipments directly to the units or storage area.

All Concessionaire delivery carts, utility carts and trash collection dumpsters are asked to adhere to the following specifications to avoid damage to the Airport:

- Revolving white rubber, non-marking corner bumpers on platforms or base of carts
- Full encircling rubber bumpers around lower platform base
- Handles, bag holders or other portion carts that can cause damage, are to be protected with 3" revolving, white rubber, non-marking bumpers.
- Base of all carts are to be made of tubular construction.
- 8" x 1.75" Semi-Pneumatic ball bearing wheels are to be used.

Concessionaires found using non-compliant delivery equipment may be barred from future deliveries until which time equipment has been modified or replaced.

**e. Airfield Deliveries**

**1. General**

All Concessionaires are bound by the rules set forth by MDAD for operating motor vehicles on the airport's Airside Operation Areas (AOA). The requirements below summarize those rules that are typically applicable to the Concessionaire but in no way are representative of all airfield rules.

Concessionaires requiring AOA deliveries must call Airside Operations at 305-876-7359 during business hours and after hours call the Senior Agent at 305-588-7094, a minimum of one business day prior to the delivery date you must provide with the requesting company's name, name of person calling, MDAD ID number, contact phone number, name of company making the delivery, AOA entry point and delivery destination. Once the delivery company is escorted to the delivery site, the Concessionaire is required to provide continuous escort of delivery personnel while in the Security Display Area (SIDA).

## 2. Construction

Construction contractors must physically report to the Airside Operations Office located at E-20 Ground Floor, a minimum of one business day prior to the delivery date and submit for approval the Construction Delivery Notification Form. Once the delivery is escorted to the construction site, the contractor is required to provide continuous escort of delivery personnel while in the SIDA area.

Delivery vehicles arriving at an MDAD Access Gate without MDAD approved advance notification will be denied access.

No motor vehicle shall be operated on the Airport except on roadways or areas designated for such purposes.

Motor vehicles and equipment operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of the Aviation Department. In addition, company identification must be conspicuously displayed on such motor vehicles and equipment.

Except as otherwise stated in this handbook or other rules and regulations provided to the Concessionaire, the laws of the State of Florida in regard to the operation of motor vehicles, including traffic regulation, are made applicable also to the operation of motor vehicles on the Airport.

### **f. AOA - Driver Training**

Before any employee is permitted to operate a motor vehicle of any kind or type on the AOA, such employee must attend and successfully complete the AOA Driver Training Course conducted from time to time by the Aviation Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Aviation Department for any violation of AOA driving rules. The Concessionaire shall be responsible ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses.

## **F. Promotional Events and Public Relations Opportunities**

### **1. Promotional Events**

Concessionaires are encouraged to conduct promotional events. Concessionaires are limited to conducting promotional events within the limits of the lease premises unless otherwise approved in writing. Promotional events should be coordinated and approved by the Commercial Operations Division.

Clean up activities associated with any promotion, unless otherwise specified, are the responsibility of the concessionaire organizing the promotion.

Application to conduct promotional activities in the Terminal must be made in writing to Commercial Operations.

## **2. Public Relations Opportunities**

MDAD recognizes the desire of concessionaires to disseminate press releases for marketing and public relations purposes. Prior to sending press releases out regarding particular MDAD unit events, promotions or news, the releases must be approved by MDAD.

MDAD will not copy edit the release, but may make recommendations. This procedure is intended as a means of keeping the appropriate departments aware of airport business activities and a coordination to ensure the varied business activities public relations' efforts are appropriately coordinated.

## **G. Customer Complaint/Comment Procedures**

Concessionaires must make reasonable, respectful efforts to remedy problems and issues raised by Airport patrons. Concessionaire must answer in writing all written customer complaints within ten (10) calendar days after receipt thereof and furnish a copy of the complaint and said answer to the Commercial Operations within the ten-day period.

## **H. Airport Police**

The Miami-Dade County Police Department, located on site, is responsible for the overall safety and security of the airport and is recognized by the State of Florida as officers of the law with jurisdiction over airport activities.

### **1. Criminal or Suspicious Activity**

Concessionaires and their staff should use the following resources should they see or suspect illegal activity.

Concessionaires can call the Police Department at 305-876-7373 to report a crime in progress or other suspicious activity.

## **I. Concessions Security**

### **1. Employee/Contractor Strike Activities**

In the event that a Concessionaire's business anticipates a strike of its staff or of companies that service the Concessionaire, the Manager of Landside Operations must be contacted for specific guidelines for governing strike activities at MIA.

### **2. Store Security MDAD to Confirm**

The Miami-Dade County Police Department routinely patrols the terminal building and individual concessions. Commercial Operations staff meets with concession managers, store owners and staff on a monthly basis to discuss current problems. This meeting should be used to communicate ideas and methods of improving security. Store managers with questions or concerns may contact Commercial Operations.

### **3. Prosecution of Shoplifters**

To maintain a high level of security at the airport, Concessionaires are strongly encouraged to prosecute shoplifters and staff caught stealing by attending court sessions. If a Concessionaire catches a shoplifter or observes a theft, immediately call 305-876-7373. To curb this activity, attending court sessions are critical.

### **4. Reporting Incidents**

Badged staff function as a second set of eyes and ears for Airport Security and the Miami-Dade County Police Department. If a crime or suspicious activity is witnessed, please call the Police Department at 305-876-7373.

### **5. Loitering**

If the Concessionaire notices a problem with airport staff or other people unknown to the Concessionaire, please call the Police Department at 305-876-7373.

### **J. Emergencies**

The Operations Control Room (OCR) emergency communication and dispatch functions for the airport's police, fire, airport operations and maintenance departments. For protective and emergency services call:

Police Emergency: 305-876-7373

Fire/Medical Emergency: 305-876-7070

Operations: 305-876-0125

## **1. Medical**

MDAD Fire Department's fully-trained and equipped Emergency Medical Technicians (EMTS) are on duty twenty-four (24) hours per day to handle any and all medical emergencies, regardless of severity. For Fire and Medical emergency, call 305-876-7070. Patients are taken to nearest Hospital.

## **2. Fire**

In case of fire, Concessionaires are asked to be familiar with, and to instruct new staff in, the following procedure.

- 1) Evacuate the area.
- 2) Call for Fire or Medical assistance at 305-876-7070.
- 3) Attempt to fight the fire with a portable fire extinguisher ONLY if:
  - a. you have been trained in the use of a fire extinguisher;
  - b. the Fire Department has already been notified; or
  - c. you can do so without exposing yourself to injury or the possibility of becoming trapped by the fire.

The Fire Department conducts regular inspections of Concessionaire and concession premises including storage areas, the main terminal, all concourses and all MDAD owned buildings for the purpose of fire prevention and to ensure compliance with fire safety practices.

An inspection report will be issued containing information relating to issues of non-compliance and/or recommendations by the inspector, with a date of re-inspection to ensure that the required corrections have been completed.

### **a. Fire Safety Compliance**

The Fire Department will work with Concessionaires to ensure compliance with fire safety practices and codes. More rigorous regulations may be set for specific Concessionaires through provisions in the Lease. Fines for non-compliance as a result of inspections could occur.

### **b. Suspected Fire Code Violations**

If Concessionaire suspects a fire code problem or if there is a concern about fire safety, questions can be directed at the time of inspection, or by calling the Fire Department.

### 3. Other Reporting Concerns

It is in the best interest of all airport staff to ensure that MIA is a safe workplace and place to visit. All staff are required, therefore, to assist the DOA with safety by being proactive in reporting any incidents that might threaten the safety of MIA's staff or visitors. This may include the following:

- Spills
- Ceiling / roof leaks
- Roadway potholes
- Non-functioning elevators / escalators
- Buckled carpeting / flooring concerns
- Bare electrical wires
- Pests and birds in the terminal
- Unsafe construction activity

Call Operations Control Room (OCR) at 305-876-0385 to report these problems.

### 4. After Hours Activity

Concessionaires should notify Operations Control Room (OCR) at 305-876-0385, when Staff will be working in the store / office after normal operating hours. Some activities may need to be approved by MDAD, Security and/ or the airlines. Advance calls will prevent confusion.

### 5. Access to Premises

#### a. Keys and Locks Policy

MDAD controls all keying and re-keying of MDAD facilities excluding Concessionaire Leasehold areas. A licensed and bonded locksmith hired by MDAD does keying and lock repair through a work order request.

#### b. Grand Master Key Policy

The Grand Master (a key that will open all airport locks) is kept by 1) police under "break" glass, 2) each shift commander of the fire department, and 3) the licensed and bonded MDAD locksmith.

No access will be granted using the Grand Master key except under the following conditions:

- a. Fire or fire emergency within the locked area (this does not include access for fire inspections, testing or other regulatory activity);

- b. Life threatening policy emergency or active pursuit of known suspect;
- c. Maintenance, when actively working on an authorized lock request; and
- d. Other emergency conditions as authorized by the Airport Manager.

#### **4. Locked Out Procedure**

In the event a concession employee is "locked out", "locked in", "forgotten keys", "lost keys" or is not involved in any of the emergency events listed above, the Grand Master key will not be used to gain access to the premises. A new key must be authorized to cover this situation. Only an authorized representative of the concession can request additional keys to access the premises.

NOTE: Requests should not be forwarded to the Police for purposes of unlocking Concessionaire space in the case of "forgotten keys" or "locked out" events.

### **K. Trash Removal**

#### **1. Refuse Disposal**

All concessions are required to handle, recycle or dispose of garbage, papers, or refuse or other material on the Airport in the receptacles provided for that specific type of recyclable or non-recyclable waste. MDAD is not responsible for concession's refuse. MDAD is responsible for the refuse disposal contract for the hauling of solid waste and recyclables away from the terminal building.

Concessionaires must cover trash containers in all areas. Concessionaires are not permitted to use a vehicle used for hauling trash, dirt or any other materials on the Airport unless the vehicle is constructed so as to prevent the contents from escaping.

Within the Concessionaire premises, Concessionaire must provide suitable waste receptacles for oily wastes, rags and other rubbish and trash. All waste is to be removed daily.

#### **2. Designated Disposal Site**

MDAD maintains a solid waste and disposal unit providing trash compactors and recycling bins at designated sites in the Terminal building. Refuse from store operations, deliveries and storage areas shall be contained in this area. No other areas shall be used. All such areas shall be kept clean and sanitary at all times.

Temporary storage or disposal of refuse in places other than the designated solid waste and recycling bins is not permitted. Dumping of boxes or other materials, particularly in or near storage rooms and access hallways, is considered a fire and safety infraction.

In the event of spillage of trash, grease or any material which may be unsightly or detrimental to the pavement, or which might cause a safety hazard, the Concessionaire is responsible for clean-up.

#### **L. Airport Information Services**

Information centers are located in the center of both the departure/ticketing and baggage claim levels of the terminal. Staffed hours are generally from 5:00 AM to 10:00 PM, Monday through Sunday.

#### **M. Airport Paging**

The Airport Paging Center pages individuals for the purpose of delivering messages or giving directions. Concessionaires can use the paging system to locate passengers who have left merchandise or belongings. Paging hours are available 24 hours daily and the center can be contacted at 305-876-7000.

#### **N. Terminal Construction**

##### **1. Right to Develop Airport**

Construction and alteration of the terminal building, concourses and roadways are ongoing to meet the demands of the traveling public. MDAD reserves the right to develop or improve the airport as it sees fit.

##### **2. Inconveniences during Construction**

During construction, remodeling, expansion, relocation, maintenance and repair of the airport Concessionaires should expect some inconveniences during the process including, but not limited to, noise, dust, vibration and changes in access. MDAD will take action necessary to ensure the safety and protection of concession staff and merchandise as it is able.

Should Concessionaires experience extraordinary, unworkable conditions related to construction, Concessionaire should contact Commercial Operations immediately. Commercial Operations will assist Concessionaire in its attempt to remedy the situation or minimize construction impact on the concession.

##### **0. Required Monthly Meetings**

The Concessionaire shall meet no less than monthly and regularly with the Department to discuss matters relating to its Agreement. In addition, at the Department's request, the

**STANDARD AIRPORT PROCEDURES (Continued)**

Concessionaire shall attend other meetings with the County, airlines and any other parties designated by the Department.

Concessionaires are also required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may time to time require.

## V. KEY CONTACTS

AVIATION PROPERTIES DEPARTMENT		TELEPHONE NUMBER
ACCESS TO PREMISES	Superintendent, Aviation Maintenance	
BADGES	Ground Transportation Office	
CONFERENCE CENTER	Reservations and Information	305-871-4100
DELIVERIES	Airside/Superintendent Airfield Operations	305-876-0152
	Landside /Supervisor Parking Control	305-876-7024
POLICE	Communications Center (24 Hours)	305-876-7373
FIRE/MEDICAL	EMERGENCY	305-876-7070
FIRE SAFETY	Fire Inspection Section	305-876-7070
INFORMATION SERVICES	Information and Paging	305-876-7000 ext. 8
LEASEHOLD PREMISES	Property Manager	
MAINTENANCE	Maintenance Dispatch (24 Hours)	305-876-7311
PARKING	Manager, Parking Systems	305-876-7024
RENT, FEES, AND CHARGES	Aviation Finance Specialist	
SECURITY AND SAFETY	Chief	305-869-4247
SIGNAGE	Property Manager	305-876-0299
STORAGE	Property Manager	305-876-7753
TRASH/RECYCLING	Maintenance Coordinator	305-876-0923

## EXHIBIT L

### STANDARDS OF OPERATION

#### I. OPERATING REQUIREMENTS:

The Concessionaire shall comply with the Department's, "**Tenant Handbook**" **Exhibit K** and the "**Terminal Standards Manual**" ([www.miami-airport.com](http://www.miami-airport.com)), which may be amended from time to time, and the Concessionaire further agrees that its operation under the Agreement is a service to airline passengers and the users of the Airport and that the Concessionaire and/or its Sub-tenants shall conduct its operation in a first-class, businesslike, efficient, courteous, and accommodating manner. The Department shall have the right, in accordance with the provisions of the Lease and Concession Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and conditions of the locations. The Concessionaire and/or its Sub-tenants agree to promptly discontinue or remedy any objectionable practice.

All products must be top quality and new and a sufficient quantity of merchandise must be carried on the locations to ensure that the locations will be fully stocked at all times. The Concessionaire's and/or its Sub-tenants shall maintain adequate sales force on the locations and use the utmost skill and diligence in the conduct of the business. All employees, both the Concessionaires and its Sub-tenants shall be courteous and helpful to the public. Employees, interacting with the public, must be able to speak English and Spanish.

In addition, the Concessionaire understands and agrees that its operation at the Airport necessitates, at a minimum, the rendering of the following services:

#### A. Conduct of Operations Within Locations:

- 1) Concessionaire and/or its Sub-tenants shall not affix or maintain upon the glass panes or supports of the show windows, doors and the exterior walls of the locations, or any place within the locations if intended to be seen from the exterior of the locations, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items. The Department shall have the right, without giving prior notice to Concessionaire and/or its Sub-tenants and without any liability for damages to the locations reasonably caused thereby, to remove any of same from the locations, except such as shall have first received written approval of the Department as to size, type, color, location, copy, nature and display qualities.
- 2) No awning or other projection shall be attached to the outside walls of the locations or the terminal building without the prior written consent of the Department.
- 3) All loading and unloading of goods shall be done only at such times, in the areas and through the entrances designated for such purposes by the

Department. The Concessionaire and/or its Sub-tenants may be required to utilize the services of a delivery /distribution company selected by the Department, if the program is so implemented.

- 4) All garbage and refuse shall be kept in the appropriate containers so as to minimize the spillage of such garbage and refuse.
- 5) No radio or television antenna shall be erected on the roof or exterior walls of the locations without the prior written consent of the Department. Any such aerial shall be subject to removal without notice at any time, and any damage to the walls or roof caused by such removal shall be the responsibility of the Concessionaire
- 6) No loudspeakers, televisions, radios, flashing lights or other devices shall be used in a manner so as to be heard or seen outside the locations without the prior written consent of the Department.
- 7) The outside areas immediately adjoining the locations shall be kept clear at all times by Concessionaire and/or its Sub-tenants, and Concessionaire and/or its Sub-tenants shall not place any obstructions, garbage, refuse, merchandise or displays in such areas.
- 8) Concessionaire and/or its Sub-tenants shall not permit storage or restocking bins to be visible to the public, except while in the actual process of restocking shelves and display fixtures.
- 9) Concessionaire and/or its Sub-tenants, its employees, or its agents, shall not solicit business in any of the common areas, nor shall Concessionaire, its employees or its agents, distribute any handbills or any other advertising matter in common areas of the Terminal nor in any of the related parking facilities.
- 10) Concessionaire and/or its Sub-tenants shall not carry on any trade or occupation or operate any instrument or apparatus or equipment which emits an odor or causes a noise discernible outside the locations and which may be deemed offensive in nature.
- 11) Concessionaire and/or its Sub-tenants shall cause the locations to operate a minimum of seventeen (17) hours per day, seven days per week, with sufficient personnel to render a high quality of service. The Department may increase or decrease the required operating hours, if, in the discretion of the Department, such a change is desirable in providing the most efficient service.
- 12) Concessionaire and/or its Sub-tenants shall be required at all times to change any bill in denomination of twenty dollars (\$20.00) U.S. or less when requested by any Airport user without charge and without the need to procure a sale. Concessionaire and/or its Sub-tenants shall accept all major credit cards and travelers checks.

- 13) Concessionaire agrees that it shall obtain prior written approval from the Department in all of the following matters:
  - i. Methods and hours of operation.
  - ii. Uniforms to be used by employees.
  - iii. The decor of the locations and all signs installed, erected or displayed therein.
- 14) The Concessionaire and/or its Sub-tenants shall properly control the actions of its employees at all times while said employees are working on the Airport, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner and that they maintain a high standard of service to the public.

**B. Property Management:**

The Concessionaire will perform the following duties, subject to the terms, conditions, limitations and all other provisions of this Agreement:

- 1) Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
- 2) Monitor and enforce compliance with the terms and conditions of the lease and concession agreement and, if applicable, the sub-lease concession agreement, including but not limited to use clauses, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees and rent, and signage.
- 3) Function as operations liaison between the Department, governmental agencies, sub-tenants and/or others.
- 4) Maintain, or cause to maintain, the facilities in a first class manner pursuant to Department standards, which may be promulgated from time to time.
- 5) Ensure Customer Service Program compliance. High quality customer service is the cornerstone to an effective sales program. The Concessionaire is required to submit a customer service program or cause it's Sub-tenants to submit a customer service program within thirty (30) days of the Effective Date of the Agreement or within thirty (30) days of the Effective Date of the Sub-lease Agreement, for MDAD review and approval.
- 6) The Concessionaire and/or its Sub-tenants shall cause (i) cooperation in the testing of pressure, water flow and other appropriate tests of the fire extinguishing systems and apparatus located within the locations from time to time and as often as reasonably required by the Department, and if requested by the Department, furnish the County with copies of written reports of such tests; (ii) keep in proposer functioning order all fire fighting equipment in each locations and at all times maintain in each locations adequate stocks of fresh, suitable chemicals for use in such system and apparatus; (iii) notify the Department prior to conducting such tests; (iv) monitor and enforce compliance by the sub-tenants with all firefighting and

- other health and safety equipment and systems, and any related licenses, certificates and inspections.
- 7) Direct, coordinate and monitor procedures and practices for deliveries of goods, products, materials and equipment, to and from the locations, as well as the collection and disposal of all waste and refuse related to the locations.
  - 8) Remove signage and install temporary barricades in the event a sub-tenants location(s) is vacated or closes for any reason. ,

**C. Leasing:**

The Concessionaire will perform, but is not be limited to, the following:

- 1) Develop, subject to review and approval by MDAD, a standard sub-tenant Lease Agreement, in accordance with Article 19 "Sub-Leases".
- 2) Recruit, secure and retain, throughout the term of the Agreement, the proper tenant mix to meet the Departments proposed newsstand and/or specialty retail concepts.
- 3) Negotiate leases with potential sub-tenants to include, but not limited to, the following:
  - Negotiate the financial terms with potential sub-tenants in accordance with MDAD approved key business terms and baseline pro-forma.
  - Perform background checks and due diligence on all prospective sub-tenants, including partners, joint ventures, and other key participants.
  - Prepare and make available, if requested, background check summaries.
  - Prepare an abstract of the potential sub-tenant's entire deal, outlining all business terms for MDAD approval. The outline, unless otherwise instructed, will include, (i) concept summaries, to include, approved merchandise lists and any available photos or renderings, (ii) terminal plans depicting spaces of proposed spaces, (iii) financial and term sheets that will include the economics of the deal, (iv) anticipated sales per enplanement, (v) financial return to MDAD, (vi) sub-tenants projected investment summaries, (vii) amortization schedules, (viii) comparative airport data, and (ix) other pertinent aspects of the deal including local and/or DBE participation.
  - If applicable, enter into sub-leases for all retail and newsstand operations. The Concessionaire will coordinate its leasing process with the Department, obtaining approval of each rental arrangement, based upon a standard form of sub-lease approved in advance by the Department.
  - Prepare the appropriate Sub-tenant lease agreement.
  - Prepare exhibits to the sub-tenant lease agreement.

- 4) Establish and maintain for the Department a potential sub-tenant database, including the preparation of correspondence with potential sub-tenants.

**D. Construction Management:**

- 1) Tenant Coordination: The Concessionaire will be responsible for the management, administration and coordination of all design and construction associated with the maintenance, repair and/or leasing of the locations including, without limitation, all sub-tenant fixed improvements and/or refurbishments to be constructed in the locations, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the locations or future construction and alterations. The Concessionaire shall be responsible for the supervision and coordination, subject to the prior written approval of the County, of the design of any sub-tenants locations to the extent contemplated in such sub-tenants sub-contract, including without limitation, the design of such sub-tenants storefront and the specifications of such sub-tenants equipment.

**E. Merchandise Category Management:**

Each Location throughout the Terminals under this program has been assigned a designated concept category. The category designated for each particular Location has been chosen based on analysis of historic customer capabilities and preferences, both here at the Airport, and at other airports of similar size and passenger traffic mix.

The Concessionaire is required to operate the Locations with a concept that complies with the designated categories for each respective Location. The Department has the right for final concept and product mix approval.

**1. News/Books and Related Concepts**

All of the concepts described below have a predominant News theme with variations of concepts and merchandise assortments.

- a. Newsstands (As distinct from News & Gift): These Locations will allocate no more than 5% of the sales floor space to high quality regional gifts, souvenirs and apparel.

These newsstand locations will have a heavy emphasis on a large selection of reading materials such as magazines, newspapers and books. A minimum of 500 separately displayed major national periodicals and magazines are required along with at least 200 book titles to include the top 20 weekly New York Times paperback and hardcover best sellers. (i.e., if there are 10 copies of one book, this represents one title.) Due to the varying leasable square footage of available newsstands that may be

leased under this Solicitation, exceptions to the required number of periodicals and book titles will be made on a case-by-case basis.

Regardless of size, the newspaper selection should consist of at least three local, two regional and three national papers. The Concessionaire is encouraged to determine and provide the most appropriate international papers depending on the Location's proximity to international flights.

Accompanying and complimenting the books and magazines will be a selection of health and beauty aids (HBA), snacks, travel accessories, and bottled beverages, offered at room temperature and refrigerated. Selling space allocation, expressed as a percentage of the total square footage of the Locations, is as follows:

Reading Materials	70%
HBA/Sundries	10%
Snacks and Beverages	15%
Gifts/Souvenirs/Travel Acc.	5%
Total	100%

Travel accessories might include wheeled luggage carts, small personal care and health products, small electronics, travel books and maps and travel pillows.

- b. News & Gift (As distinct from Newsstands): A news and gift Location can dedicate up to 35% of the store's selling space for high quality regional gifts, souvenirs and apparel. The majority of the merchandise offered will focus on the categories of news, magazines and books, presented in a way that provides an unmistakable impression that the Location is a newsstand with a combination of essential travel health and beauty aids, snack foods, bottled beverages, and high quality regional gifts and souvenirs.

A minimum of 300 separately displayed major national periodicals and magazines are required along with at least 200 book titles to include the top 20 weekly New York Times paperback and hardcover best sellers. (e.g., if there are 10 copies of one book, this represents one title.) Due to the varying leasable square footage of available newsstands that can be leased under this Solicitation, exceptions to the required number of periodicals and book titles will be made on a case-by-case basis.

The newspaper selection should consist of at least three local, and three national papers. The Concessionaire is encouraged to determine and provide the most appropriate international papers depending on the unit's proximity to international flights.

Accompanying and complimenting the books and magazines will be a selection of health and beauty aids (HBA), snacks, travel accessories,

and bottled beverages, offered at room temperature and refrigerated. Selling space allocation, expressed as a percentage of the total square footage of the Locations, is as follows:

Reading Materials	45%
HBA/Sundries	10%
Snacks and Beverages	10%
Gifts/Souvenirs/Travel Acc.	35%
Total	100%

- c. Bookstores: Each Location must include at least 3,500 separately displayed book titles. (If there are 10 copies of one book, this represents one title.) The top twenty hardcover and paperback best sellers on the New York Times Book Review Section must be carried. A minimum of five percent of the book titles must be children's books. All books must be sold at no more than the publishers' price. At least 50, but no more than 100, separately displayed major national periodicals and magazines shall be carried at all times.

The sales floor should be divided into two zones. The front half should feature a broad assortment of best sellers, new release and topical titles. The face-out ratio in this area should be at least 50%. The back half should feature a broad assortment of backlist titles. This area should be conducive to browsing, offering selection over quantity of copies.

It is strongly recommended that any stores with more than 1,000 feet of sales floor dedicated to books try to designate as a reading area, a quiet respite area in essence, containing plush furniture.

- d. Sundries: This location could sell homeopathic and naturopathic supplements, vitamins and other nutritional products, over the counter drugs, baby, beauty, toiletries, health and personal care products, cosmetics film, children's toys and regional gifts, and souvenirs. An assortment of candy and snack foods could be carried as well.
- e. Café Components for Newsstands or Bookstores: In addition to the merchandise mix required in newsstands or bookstores, Locations with a café component should offer hot and cold beverages and a limited selection of walkaway food items. Menu items might include, for example, branded upscale gourmet specialty coffee, lattes, other specialty cold beverages, pre-packaged specialty sandwiches, and freshly baked or prepared pastries and desserts such as croissants, muffins, bagels, scones, biscotti, Danish, cookies, brownies, cakes and fruit bars.

The café section must be located at or near the front of the Location and occupy between 10-25% of the total selling space. There must be direct interior customer access from the retail section of the store.

## 2. Specialty Retail

- a. Entertainment & Consumer Electronics: These stores may include product lines dedicated to high-end, state of the art custom home theater audio including DVD sales and rentals, music downloads, CDs, headphones, CD players, MP3 players, batteries and chargers, music posters and other accessories.

This category may also include stores specializing in the sale of video game hardware and software, PC entertainment and related accessories and products, wireless devices and accessories, cell phone accessories, and cameras. Stores carrying high-quality products reflecting educational and entertaining programming also are permitted.

Another option might include distinctive home and office, health and fitness and outdoor products and products for the traveler.

The locations within this concept category are meant to address the passenger needs for purchasing affordable personalized entertainment, and/or consumer electronics and gadgets not generally available to the targeted international visitors. Product offerings should generally be of an impulse nature and small enough to be transported readily.

- b. Fashion Apparel & Accessories: These Locations would optimally, but would not be required to present internationally recognized brands. This fashion apparel category could include concepts such as Casual Apparel, Leather Apparel, Fashion Accessories, Athletic Wear or Sports Apparel and accessories, Women's Fashions. These Locations could present U.S. designers such as Tommy Hilfiger, Nautica, Calvin Klein, Ralph Lauren, or DKNY. These Locations must have store design and merchandising displays that are innovative and inviting.

A Location with fashion accessories could feature a blend of branded fashion accessory products in multiple price ranges. Acceptable products might include ties, belts, scarves, handbags, wallets, and small leather essentials.

The concepts in this fashion apparel and accessories category also could include men's shoes or women's footwear. A complete line of footwear accessories could complement the footwear product line, with some apparel accessories such as socks, hosiery, leather belts, and men's dress shirts and cuff links.

- c. Gift Specialty Shops: The specialty shops Locations in this category could include a destination themed souvenir store carrying gifts unique to South Florida including, for example, arts and local crafts. This concept category addresses the demand for unique gifts

representative of the best products from the gift shops of South Florida tourist destinations and hotels. These stores would be an important image enhancer for the region and a viable destination concept. Product categories might include, but not be limited to, local artisans original works of art and reproductions, logo's accessories, children's products such as art books, kites and paint sets, South Florida logo's apparel, souvenirs, novelties, chocolates and specialty citrus products celebrating Miami as a vacation destination.

Other concepts could include gourmet packaged foods, toy stores, chocolates, or lifestyle gifts.

If a lifestyle gifts store is proposed, it must present internationally recognized brands. It is envisioned that this Location would carry a variety of distinctive, selected housewares and small wares products covering every room of the house. This Location is imagined as carrying a selection of, or just one specific product line of, high-quality and unique items for the bedroom, bathroom, kitchen, living room and/or garden including such things as cabinet hardware, interior and exterior fittings, picture frames, small garden equipment, fixtures, tools, books, devices and nostalgic amusements. As with other Locations, these concepts must have a visible shipping service offering.

- d. Jewelry, Watches & Accessories: These Locations could include fashion jewelry, high-end jewelry, watches, sunglasses and accessories for women, men and children and writing instruments. Examples of jewelry categories might include necklaces, bracelets, earrings, rings, hair accessories, and jewelry boxes. Merchandise could be themed to a particular jewelry type, such as sterling silver. Customers should be able to easily view and try on jewelry in a distinctive, comfortable, well-lit, upscale shopping environment. A writing instrument selection could feature internationally branded gold, silver, platinum and stainless ballpoint, fountain, rollerball, and highlighter pens and related merchandise such as pencils, inkwells and replacement cartridges. Related product lines could include leather cases, money clips and key chains.

A sunglasses Location could offer a mix of nationally branded sunglasses and related accessories including but not limited to, such notable fashion designer brands as Maui Jim, Ray Ban, Bolle, Persol, Prada, and Oakley.

- e. Personal Care: This concept category may offer personal care products for men and women, fragrances, or cosmetics, hair, nail or spa products and services. This concept features design elements that are sympathetic to the senses such as therapeutic warm colors, soft, natural fabrics, nurturing lighting and relaxing music.

Merchandise content could feature quality bath and aromatherapy products, candles and candle accessories and related items including gift baskets. If a fragrance store is contemplated, the Location should provide the opportunity to buy U.S. and world-renowned fragrances featuring men's colognes, women's perfumes and unisex designer-type prestige fragrances and related products such as fragrance oils and perfumes, exotic, fancy crystal and glass bottles, and accessories. A cosmetics store would feature quality skin care, makeup, fragrance and hair care products, and be displayed at a quality level equal to or greater than the finest department store cosmetics counters featuring such brands as Clinique, Revlon, or MAC.

A hair/nail salon will offer quality haircuts, shampoos, color, permanents and other related services and retail products associated with such offering. A spa will offer facials, pedicures, manicures, massages and other related services and products associated with such offering.

A knowledgeable staff that is able to educate consumers and an environment that allows customers to sample products are important for this store.

- f. Open Concept Designation: The concepts or themes for these locations are left to the discretion, creativity, and experience of the Proposers/Concessionaire. All proposals for these locations will be given careful consideration. The only concept that cannot be proposed for these "open" locations is a concept that would fall in the previously described "News/Books and Related Concepts".

**F. Special Services**

- 1) Monitoring Services: The Department shall have the right, without limitation, to monitor and test the quality of services of the Concessionaire and/or its Sub-Tenants, but shall not be required to do so. This monitoring shall include, but not be limited to, personnel, product quality, service, assistance and store neatness, through the use of shopping services, closed circuit T.V., and other reasonable means.
- 2) Prohibited Items/Shipping Services: The Transportation Security Administration (TSA) has instituted a security measure that prevents certain items from entering the Airport's sterile areas or post-security checkpoints.

The Department will provide a list of those items, which may change from time to time, to the Concessionaire as depicted on Exhibit J "Prohibited Items List" and the Concessionaire will cause its Sub-tenants to receive and acknowledge receipt of said Exhibit J "Prohibited Items List".

As a result of this restriction, the Concessionaire shall provide consumers shipping services and will cause its Sub-tenants to provide shipping services for those items listed on Exhibit J "Prohibited Items List".

**G. Security:**

- 1) Security: The Concessionaire acknowledges and accepts full responsibility for the security and protection of the locations, any improvements thereon, its equipment and property on the Airport, and control of access to the Air Operations Area ("AOA") through the locations by persons and vehicles. The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for the protection of said locations, equipment and property and access to the AOA through the locations shall be the sole responsibility of the Concessionaire and shall involve no cost to the County.
- 2) Security Identification Display Areas Access - Identification Badges: The Concessionaire shall be subject to all Departmental requirements and FAA mandates pertaining to the issuance of airport identification badges. Including, but not limited to employee completion of SIDA training conducted by the Department and background checks, as required by the FAA Unescorted Access Privilege Rule. The Concessionaire shall pay, or cause to be paid, to the Department such nondiscriminatory charges, as may be established from time to time, for lost or stolen ID badges and those not returned to the Department in accordance with this covenant. The Department shall have the right to require the Concessionaire to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data may include the fingerprinting of employee applicants for such badges.
- 3) AOA - Driver Training: Before the Concessionaire shall permit any employee to operate a motor vehicle of any kind or type on the AOA, the Concessionaire shall require such employee to attend and successfully completed the AOA Driver Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department for any violation of AOA driving rules. Notwithstanding the above, the Concessionaire shall be responsible ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses.
- 4) Alcohol and Drug Testing: The Concessionaire acknowledges that the County, as a public agency, sponsors under the provisions of the Airport and Airway Improvement Act of 1982, as amended (the "Act"), has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. The Concessionaire acknowledges that Department, on behalf of the County, has the right to require users of the Airport (Concessionaires, Permittees, Licensees, etc.) To establish reasonable programs to further the achievement of the objectives described herein. Accordingly, the Concessionaire shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport who will as a part of their duties (a) be present on the AOA; (b) operate a motor vehicle of any type on the AOA; or (c) operate any equipment, motorized or not, on the AOA and for the

same or similar screening based upon a reasonable suspicion that an employee, while on duty on the AOA, may be under the influence of alcohol or drugs. Notwithstanding the above, the Concessionaire specifically acknowledges that the County, acting through the Department, has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person who it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

- 5) Special Programs: The Concessionaire shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may time to time require.
- 6) Vehicle Permit and Company Identification: Motor vehicles and equipment of the Concessionaire operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of the Department. In addition, company identification must be conspicuously displayed on such motor vehicles and equipment.
- 7) Federal Agencies Right to Consent: The Concessionaire understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services shall not be employed by the Concessionaire in areas under the jurisdiction or control of such federal inspection agencies.
- 8) AOA - Right to Search: The Concessionaire agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the AOA. The Concessionaire further agrees that is shall not authorize any employee or agent to enter the AOA unless and until such employee or agent has executed a written consent-to-search form acceptable to the Department. Persons not executing such consent-to-search form shall not be employed by the Concessionaire at the Airport, in any job requiring access to the AOA.

It is further agreed that the Department has the right to prohibit an individual, agent or employee of the Concessionaire from entering the AOA based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage or other unlawful activities. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the Director of the Department or his authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reasons for such denial.

The Concessionaire acknowledges and understands that these provisions are for the protection of all users of the AOA and is intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other activities at the Airport.

## II. MARKET BASKET PRICING POLICY

The Department has instituted a market basket pricing policy to ensure that Airport prices are comparable to retail outlets and dining facilities in the Miami Dade County, Florida area.

The Concessionaire and/or its Sub-tenants shall be required to charge no more than the market basket prices as determined in accordance with the following methodology:

1. **Same or Similar Product Line:** To determine reasonable prices, Concessionaires annually will select three (3) Miami-Dade County sites where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels. Concessionaire and/or its Sub-tenants' prices on any specific item may not exceed the average by more than ten per cent (10%) of those remaining after eliminating the lowest priced-Location. If fewer than three (3) Locations carry a specific item, the maximum permissible price shall not exceed the average by more than ten per cent (10%) of the three (3) highest Locations. If fewer than three (3) Locations carry the item, the maximum permissible price shall not exceed the average price of all Locations carrying the specific item by more than ten per cent (10%). If no other Location carries the item, the Concessionaire shall therefore charge a reasonable price; in which case, the Department reserves the right to determine whether the price is reasonable.
2. **Same Store:** For any or all operations where a Concessionaire currently operates the same or similar store in the Miami-Dade County area, the Concessionaire may not charge more than ten percent (10%) higher charges at the Airport for like or similar merchandise. The Department has the right to survey prices at said store and to use these prices for same or similar merchandise as the primary basis for pricing in leased Locations in all Locations. If no other Location carries the item, the Concessionaire shall therefore charge a reasonable price; in which case, the Department reserves the right to determine whether the price is reasonable.
3. **Price Increases:** The Concessionaire must receive written approval from the Department to increase the price of any item sold or offered by the Concessionaire or its Sub-tenants, and any such request must be accompanied by a price survey. The Department reserves the right to visit said price survey and verify price prior to approval.

**Price Check Policy:** Prices may be checked periodically to assure compliance with this policy. A selection of items, picked at random from any Location, is compared to similar items in the price survey. The Department may appoint professional shoppers to survey and shop Locations.

**B. Marketing:**

The Concessionaire may be responsible for developing and implementing a marketing and promotions program for their Locations. However, the Department will implement a Terminal Wide Marketing Program for the Airport concession program which will be funded by the Concessionaires through the payment of a marketing services fee of one-half of one percent of gross sales.

The Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) calendar days prior to the commencement of each lease year, and shall represent the upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) calendar days after receipt of the foregoing plan to approve or disapprove the same in its reasonable discretion and if MDAD disapproves the Concessionaire shall operate in substantial conformity with all such plans, approved by the Department, as may be modified from time to time.

The Department reserves the right to request at any time any further submission of plans.

**III. MANAGEMENT AND PERSONNEL:****A. Management:**

- 1) Personnel: The Concessionaire shall maintain a full time professional staff during the term of this Agreement of sufficient size, expertise and experience to manage the operations and to serve as a liaison with the Department.
- 2) General Manager: The Concessionaire shall employ, at no cost to the Department, a full time, dedicated, on-site General Manager experienced in management and supervision who has sufficient authority and responsibility to administer and manage the retail program under this Agreement. The General Manager (or his/her authorized representative) shall be immediately available whenever any of the locations are open, the base of operations of the General Manager shall be at the Airport, and the General Manager shall spend substantially all of his working hours at the Airport. In those cases where the General Manager is scheduled to be absent from the post for a period greater than forty-eight (48) consecutive hours, a substitute General Manager must be appointed from the existing staff, and the Department notified in writing.

The Department reserves the right to require Concessionaire to remove and replace any General Manager or Assistant who, in the opinion of the Department, does not perform up to the standards consistent with the fulfillment of Concessionaire's obligations under this Agreement.

Management Responsibilities: In its capacity as the Concessionaire under this Agreement, and not as an agent of the Department, Concessionaire shall manage the locations in accordance with this Agreement, in furtherance of which Concessionaire shall, among other things, (i) visit each Sub-tenants locations daily to monitor compliance with this Agreement; (ii) use reasonable efforts to remedy problems and issues raised by Airport patrons with respect to the operation of the locations, (iii) answer in writing all written customer complaints within ten (10) calendar days after receipt thereof and furnish a copy of the complaint and said answer to the Department within said ten (10) calendar day period; and (iv) promptly furnish the Department with copies of all written notices received by Concessionaire from any governmental authority or any Sub-tenant with respect to the locations or any Subcontract.

- 4) Concessionaire shall cause each sub-lease to include provisions requiring the sub-tenants to maintain an adequate sales and work force at all times, including without limitations, sales, cashiers, management and supervisory personnel on-site to fully meet customer needs at all times and use skill and diligence in the conduct of the business. Concessionaire and the sub-tenants shall cause their respective employees to be courteous and helpful to the public at all times.

**B. Administrative Functions:**

- 1) The Concessionaire shall provide or cause its Sub-tenants to provide quality control audits and reports covering compliance with contract requirements, cleanliness of the facility, timeliness of service and quality of the product. (MDAD will establish its own rules and regulations that are subject to its unilateral revision and implementation)
- 2) The Concessionaire shall generate monthly reports to MDAD, including sales by unit, concept and space. Developing annual revenue projections by month, by sub-tenant, concession type, concept, and by space to be updated on a regular basis.
- 3) Generate monthly airport revenue reports, DBE Monthly Utilization Reports and such other financial and management reports as are usual and customary in sophisticated airport newsstand and specialty retail concession management programs. Prepare other reports and analyses as may be requested periodically by MDAD including number of transactions per period, average transaction value and sales per product category.
- 4) Maintain total permanent leasable area records on an actual and leased basis and record changes for either total as they occur.
- 5) Maintain computerized records on a commercially available property management software program acceptable to MDAD. Programs and all

data collected should be available to the Department on-line (digital and electronic).

- 6) Respond to customer/passenger complaints on behalf of MDAD.
- 7) Implement any new policies and procedures as directed by MDAD.
- 8) Ensure payment of rent to MDAD to include all required rental reports. The Concessionaire is prohibited from waiving any right to receive rents, fees, charges, or other revenues that may be paid or payable by any Sub-tenant, user, or occupant under its sub-lease, without the prior written consent of MDAD, and will similarly be prohibited from granting any rent abatements, extensions, or other modifications without such prior written consent.
- 9) Coordinate and maintain general oversight of deliveries of goods and products from designated on or off-airport storage areas for the locations depicted in Section 1.03 "Locations" and Section 1.04 "Administrative Support Space".
- 10) Develop, maintain and make available if requested, sub-tenant files to include copies of licenses, permits, insurance certificates, letters of credit, annual DBE certification and correspondence.
- 11) Develop, manage, and monitor a program to identify and include Local/Small/DBE businesses in the concession programs.
- 12) Develop a DBE community outreach program for concession opportunities, subject to MDAD approval, and coordinate its implementation with MDAD.

**C. Training:**

The Concessionaire shall submit a copy of its employee Customer Service Training Program within thirty (30) calendar days of the Effective Date of this Agreement or cause it's Sub-tenants to submit their employee Customer Service Training Program within thirty (30) calendar days of the Effective Date of the Sub-lease Agreement. In addition, the Concessionaire shall annually hereafter establish a training program for its employees and the employees of its Sub-tenants and shall submit a summary report of the training areas covered and the number of participants in the following areas:

- I. Retailing in an airport environment
  - a. Fluctuations in customer activity
  - b. Shipping/handling issues
  - c. Early morning/late evening activity
  - d. Storage/inventory issues
- II. Customer service
  - a. Greeting/approaching customers

- b. Answering questions
- c. Shipping/handling
- d. Complaints resolution
- e. Establishing priorities
- f. Handling emergencies

III. Product knowledge

- a. Prices
- b. Selection
- c. Warranties/guarantees
- d. Sizes/types/colors available
- e. Shipping/handling

IV. Store operations

- a. Hours of operations
- b. Inventory
- c. Conducting and reporting transactions
- d. Management structure
- e. Hierarchy of decision-making
- f. Attire/appearance standards

**D. Staffing:**

The Concessionaire and/or its Sub-tenants shall ensure that passengers are provided the highest level of customer service. Adequate staffing levels must be maintained at all times. Peak passenger activity, the nature of the retail operation, and customers' needs shall be taken into account in determining these staffing levels. The level of staffing shall encompass sales employees, as well as store managers and stock or support staff, as appropriate to the operation.

Employee uniforms and nametags will be required in MIA retail operations. All employees are required to wear a uniform in the course of business, the uniform's design, color and overall appearance should be tasteful and in keeping with the theme of the particular type of operation.

**E. Meetings:**

The Concessionaire shall meet regularly with the Department to discuss matters relating to this Agreement. In addition, at the Department's request, the Concessionaire shall attend other meetings with the County, airlines and any other parties designated by the Department.

EXHIBIT M

**VITRINES LOCATION IN SOUTH TERMINAL**

Within the South Terminal, there are four retail display vitrines, which showcase the products to be sold within the Retail Concession program. An additional four vitrines are available for the food and beverage program within the food court.

The four retail display vitrines will be provided by the successful proposers of the two large packages (Packages One and Two) with two retail display vitrines for each package. The approximate cost of each vitrine is \$35,000 per unit.

The Concession Design Guidelines for the South Terminal outline the location of the Vitrines and also the proposed design, although both may vary somewhat depending upon the actual buildout of the facility.